TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 303.

THE UNITED STATES, APPELLANT,

vs.

ANTHONY F. NAVARRE AND EIGHTY-NINE OTHER MEMBERS OF THE POTTAWATOMIE TRIBE OF INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

FILED SEPTEMBER 3, 1906.

(19076.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1898.

No. 393.

THE UNITED STATES, APPELLANT,

vs.

ANTHONY F. NAVARRE AND EIGHTY-NINE OTHER MEMBERS OF THE POTTAWATOMIE TRIBE OF INDIANS.

APPEAL FROM THE COURT OF CLAIMS.

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1 In the Court of Claims.

ANTHONY F. NAVARRE AND EIGHTY-NINE others, members of the Pottawatomie Tribe of Indians,
vs.
THE UNITED STATES.
No. 17305.

I.—*Petition.—Filed January 27, 1892.*

To the Court of Claims:

The petition of said Anthony F. Navarre and eighty-nine others, members of the Pottawatomie tribe or nation of Indians, respectfully shows that your petitioners number in all ninety (90) persons, members of the Pottawatomie tribe or nation of Indians, all of whom during the years from 1846 to 1868, inclusive, lived and resided on the Pottawatomie Reservation in the Territory (afterwards State) of Kansas; that during the years aforesaid the white people of the United States committed depredations upon the stock, timber, and other property of your petitioners; that by article 10 of a treaty between the said United States and said Pottawatomie tribe or nation, proclaimed August 7, 1868,
2 as found in the United States Statutes at Large, volume 15, on page 533, it was provided as follows:

"ARTICLE 10. It is further agreed that upon the presentation to the Department of the Interior of the claims of said tribe for depredations committed by others upon their stock, timber, or other property, accompanied by evidence thereof, examination and report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises."

In pursuance of the provisions of said article 10, the Department of the Interior on the 20th day of December, 1871, reported the said claims to Congress, accompanied by the evidence touching the amount claimed and the character of the claims made by each individual claimant, as appears by the copies of letters hereto annexed and made part of this petition, and marked A, B, and C, respectively.

In an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling the treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and eighty-six, and for other purposes," approved March 3, 1885, Congress enacted, in the last clause of the subdivision entitled "Pottawatomies," as follows:

"That the claim of certain individual members of the Pottawatomie nation of Indians, their heirs or legal representatives, for depredations committed by others upon their stock, timber, or other property, reported to Congress under the 10th article of the treaty of August 7, eighteen hundred and sixty-eight, be, and the same are hereby, referred to the Court of Claims for adjudication. And said court shall in deter-
3 mining said cause ascertain the amounts due and to whom due by reason of actual damage sustained, and said cause shall be tried without delay as hereinbefore provided."

And in an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling

treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety-two, and for other purposes," approved March 3, 1891, Congress further enacted as follows:

"That the last clause of the subdivision entitled 'Pottawatomies' in the act entitled 'An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling the treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and ninety-one, of volume twenty-three, of the Statutes at Large,' be amended to read as follows:

"'That the claims of certain individual members of the Pottawatomie nation of Indians, their heirs or legal representatives, for the depredations committed by others upon their stock, timber, or other property, reported to Congress under the tenth article of the treaty of August 7th, 1868, be, and the same are hereby, referred to the Court of Claims for adjudication. And said court shall, in determining said cause, ascertain the amounts due and to whom due by reason of actual damage sustained.

"'And all papers, reports, evidence, records, and proceedings relating in any way to said claims now on file or of record in the Department of the Interior or any other Department, or on file of record in the office of the Secretary of Senate, or the office of the Clerk of the House of Representatives, shall be delivered to said court; and in considering the merits of the claims presented to the court, all testimony and reports of special agents or other officers and other papers now on file or of record in the departments of Congress shall be considered by the court, and such value awarded thereto as in its judgment is right and proper.'"

Your petitioners declare that their names, the dates when and the place where such depredations were committed, the kind of property so taken or destroyed, and the value of such property, are stated in the following table and under the appropriate heading, to wit:

Names of claimants.	Date of depredations.	Place of depredations.	Kind of property taken or destroyed.	Value of each item.	Total values.
1. Kop-sk Kuk-wid.	Spring, 1864	Reservation	1 American horse	$100.00	
	Spring, 1865	"	1 bl'k American mare	75.00	
					$175.00
2. Shumah-gah	Sept., 1862	Reservation	1 pony, 1 saddle, 1 bridle	60.00	
	July, 1863	"	1 pony	40.00	
					100.00
3. Ah-got	Fall of 1853	Reservation	1 pony	35.00	
	Nov., 1862	"	1 horse	300.00	
					335.00
4. Louis H. Ogee	Feb. 27, 1867	Reservation	4 ponies	180.00	
	May, 1862	"	1 bull	300.00	
	Nov., 1863	"	4,000 new fence rails	400.00	
	Sept., 1866	"	2 cows, 2 calves	90.00	
			1 steer	30.00	
			6 2-year-olds	120.00	
			1 bull	40.00	
	Nov., 1866	"	1 mare	150.00	
					1,310.00
5. Lucius R. Darling	May, 1852	Reservation	4 ponies	160.00	
			1 mare	75.00	
			1 horse	125.00	
	May, 1860	"	1 cow, 1 calf	45.00	
	May, 1863	"	2,000 fence rails	200.00	
					605.00
6. M-tah-mah	April, 1852	Reservation	2 horses	175.00	
	June, 1853	"	2 ponies	80.00	
	May, 1854	"	1 calf	15.00	
	Oct., 1863	"	1 horse, 1 saddle, 1 bridle.	150.00	
					420.00

Names of claimants.	Date of depredations.	Place of depredations.	Kind of property taken or destroyed.	Value of each item.	Total values.
7. Sam'l Cummings....	In the year 1862.	Reservation ..	4 acres of red elm and walnut timber.	$140.00	
	Oct., 1864	"	1,280 fence rails	128.00	
			120 bushels corn.....	60.00	
					$328.00
8. Pe-tah	Oct., 1860	Reservation ..	2 ponies	80.00	
	Sept., 1861	"	1 pony	40.00	
					120.00
9. Munk-quet	April, 1856....	Reservation ..	1 pony.....	40.00	
	Oct., 1856	"	1 pony.....	40.00	
	In the year 1864.	"	1 horse.....	80.00	
					160.00
10. Antwain (Curly Head).	July, 1857.....	Reservation ..	2 horses	300.00	
	April, 1858....	"	2 horses	250.00	
	May, 1859....	"	1 horse.....	125.00	
	June, 1861	"	2 mares, 1 colt.....	250.00	
	Oct., 1861	"	3 horses	400.00	
					1,325.00
11. Shak-we	May, 1850.....	Reservation ..	3 ponies	120.00	
			1 horse.....	100.00	
					220.00
12. Wah-kas	March, 1862...	Reservation ..	1 mare	90.00	
	Dec., 1863.....	"	1 pony	40.00	
					130.00
13. M-kuk-da-mko-qua.	July, 1852.....	Reservation ..	5 ponies	200.00	
	Nov., 1866	"	3 fat hogs	54.00	
			3 shoats.....	24.00	
					278.00
14. Anthony Tessier...	May, 1857.....	Reservation ..	Yoke of oxen, 1 yoke...	85.00	
	May, 1863.....	"	1 cow	45.00	
					130.00
5 15. Kahu-sah-qua	June, 1851.....	Reservation ..	3 horses.....	190.00	190.00
16. Margaret Fregon ..	March, 1862...	Reservation ..	2 horses	200.00	
	April, 1863....	"	1 mare	140.00	
	May, 1863	"	1 stallion.....	50.00	
	Oct., 1865	"	1,500 rails	150.00	
	Oct. to Nov., 1866.	"	75 trees, 1 saw, and rail.	375.00	
					915.00
17. M. B. Beaubien.....	May, 1851	Reservation ..	2 yoke of work cattle ..	200.00	
	June, 1852.....	"	3 milk cows	120.00	
			2 heifers.....	75.00	
			1 steer.....	40.00	
	May, 1859	"	1 horse.....	300.00	
	Jan., 1861	"	1 mare.....	150.00	
			1 gold watch	120.00	
	Jan., 1862	"	1 horse.....	150.00	
	July, 1864.....	"	12 ponies	480.00	
					1,635.00
18. Jas. Baldwin.....	Jan., 1862	Reservation ..	1 horse	200.00	
	Oct., 1867	"	1 mare.....	40.00	
			1 pony.....	40.00	
			1 pony.....	25.00	
			1 pony.....	15.00	
					320.00
19. Josette Vanarsdale.	May, 1855	Reservation ..	1 horse	250.00	
	July, 1858.....	"	1 span of horses	200.00	
					450.00
20. Kah-aot.....	July, 1864.....	Reservation ..	2 cows.....	75.00	
	Aug., 1865	"	1 pony.....	40.00	
	March, 1866...	"	2 mare ponies	80.00	
					195.00
21. Mitcheli Wilmett ..	June, 1860.....	Reservation ..	Post and rail timber....	400.00	400.00
22. E. R. Kennedy	Spring, 1860...	Reservation ..	1 mare.....	100.00	
	Fall, 1860.....	"	1 horse, 1 saddle, 1 bridle.	125.00	
	In the year 1864.	"	1 mare.....	120.00	
	In the year 1867.	"	1 colt.....	50.00	
	In the year 1859.	"	1 cow.....	30.00	
	In the year 1865.	"	1 steer.....	40.00	
	In the year 1866.	"	1 cow.....	30.00	
	In the year 1867.	"	1 steer.....	30.00	
	In the year 1866.	"	1 cow.....	30.00	
					555.00

Names of claimants.	Date of depredations.	Place of depredations.	Kind of property taken or destroyed.	Value of each item.	Total values.
23. Thos. J. Lazzell	May, 1862	Reservation ..	2 horses	$150.00	
	May, 1866	"	1 mare	150.00	
			1 colt	100.00	
					$400.00
24. Jno. S. Young	Sept., 13, 1856.	Reservation ..	Stock of dry goods and groceries.	3,000.00	
	Fall, 1863.....	"	1 stallion	200.00	
			1 mare	150.00	
			1 pony	40.00	
	Oct., 1866	"	7,680 fence rails	768.00	
			Corn	200.00	
					4,358.00
6 25. Jane Kennedy.	Spring, 1851....	Reservation ..	1 mare	100.00	
	July, 1863	"	1 pony	40.00	
					140.00
26. Mitchell Lafromboise.	Sept., 1862	Reservation ..	4 mares, 4 colts.....	300.00	
			1 stallion.....	100.00	
	Oct., 1862	"	1 stallion.....	50.00	
	Oct., 1868	"	1 horse	55.00	
	Aug., 1866	"	2 mares, 2 horses.....	400.00	
	Sept., 1867	"	1 mowing machine	200.00	
			5 pitchforks	5.00	
			1 harness.....	5.00	
			5 tons of hay	20.00	
					1,135.00
27. Me-Yain-co	Aug., 1853	Reservation ..	3 horses, 6 ponies	660.00	
					660.00
28. Mah jwas	July, 1849	Reservation ..	1 horse	125.00	
	Spring, 1852...	"	1 horse	140.00	
	Spring, 1854...	"	1 mare	80.00	
			1 pony	35.00	
	Spring, 1863...	"	1 pony	40.00	
	Summer, 1863 .	"	1 stallion.....	80.00	
					500.00
29. Phas-Kah-we	May, 1858	Reservation ..	2 cows, 1 calf.....	75.00	
	Aug., 1860	"	1 pony	50.00	
					125.00
30. Pam-bo-go	May, 1853	Reservation ..	1 pony	40.00	
	July, 1858	"	1 horse	100.00	
					140.00
31. Napoleon B. Bertrand.	Spring, 1852...	Reservation ..	3 cows	75.00	
			1 bull	30.00	
	Spring, 1854...	"	1 horse	75.00	
			1 colt.....	45.00	
			1 colt.....	25.00	
			1 mare	75.00	
					325.00
32. Sahg-mog	May, 1852	Reservation ..	1 mare	80.00	
			2 ponies	70.00	
					150.00
33. Ah-got	May, 1853	Reservation ..	2 horses	200.00	
	Oct., 1860	"	1 horse	100.00	
					300.00
34. John Neely	April, 1851	Reservation ..	1 horse	95.00	
			1 stallion.....	60.00	
			1 horse	80.00	
					235.00
35. Azhnick Pesqua-je.	Spring 1854...	Reservation ..	2 horses	135.00	
					135.00
36. Sah-gah-kunk.....	Spring, 1859...	Reservation ..	2 horses	225.00	
					225.00
37. Sah-gah.....	Nov., 1855.....	Reservation ..	4,500 rails.....	225.00	
	June, 1857	"	4 horses	600.00	
	Feb., 1862	"	1 horse	125.00	
			Trip for self and witnesses to recover another horse stolen.	50.00	
	July, 1862	"	1 horse	160.00	
	Spring, 1862...	"	1 hog	15.00	
	Nov., 1862.....	"	1 hog	22.50	
	Fall, 1864	"	3 hogs	75.00	
	1850 to 1866 ...	"	Pigs, vegetables, damage done to timber and property.	250.00	
					1,522.50
7 38. Nah-gdo-nuck	May, 1854.....	Reservation ..	1 horse	100.00	
	Oct., 1856.....	"	2 ponies.....	120.00	
	May, 1864.....	"	1 mare.....	80.00	
					300.00
39. Nah-nim-nuk-skuk	Spring, 1866...	Reservation ..	1 horse	150.00	
	June, 1866	"	1 horse	150.00	
					300.00

Names of claimants.	Date of depredations.	Place of depredations.	Kind of property taken or destroyed.	Value of each item.	Total values.
40. Francis X. Bergeron.	Oct., 1853	Reservation	12 head cattle	$300.00	
	Spring, 1855	"	1 bull	25.00	
			¼ ton of hay	5.00	
	Fall, 1862	"	50 bushels corn	50.00	
			30 chickens	7.50	
			1 hog	25.00	
			3 shoats	18.00	
			250 rails	12.50	
					$443.00
41. Blackbird	Spring, 1850	Reservation	2 steers	30.00	
	Fall, 1850	"	1 horse	80.00	
			1 mare	140.00	
	In the year 1850,	"	1 steer	15.00	
					265.00
42. William Phelps	Spring, 1854	Reservation	1 horse	100.00	
	Spring, 1859	"	1 bull	20.00	
					120.00
43. Wahb-nim	Fall, 1852	Reservation	2 horses	250.00	
	Spring, 1859	"	1 horse	100.00	
	Spring, 1862	"	1 horse	125.00	
					475.00
44. Emily Wilmett	July, 1851	Reservation	1 mare	100.00	
	Fall, 1851	"	2 cows, 2 calves	70.00	
	Sept., 1860	"	1 cow	40.00	
	Nov., 1864	"	2 hogs	60.00	
					270.00
45. Wesley Lewis	Sept., 1864	Reservation	4 steers	160.00	
			4 cows, 4 calves	160.00	
	Dec., 1860	"	1 pair boots, 1 suit clothes, some flour and meal.	100.00	
			$20.00 in gold	20.00	
	1864–1865	"	2 horses	200.00	
			11 head cattle	330.00	
					970.00
46. Wezo Burnett	April, 1863	Reservation	1 mare	100.00	
	May, 1866	"	1 mare	150.00	
					250.00
47. Narcis Vieux	July, 1856	Reservation	1 cow	30.00	
			1 steer	20.00	
			2 calves	15.00	
	Oct., 1857	"	1 horse	85.00	
					150.00
48. E. Beaubien	July, 1859	Reservation	3 ponies	120.00	
	Sept., 1863	"	1 ox	35.00	
	Oct., 1863	"	1 horse	100.00	
	Nov., 1864	"	700 rails	70.00	
					325.00
49. Mary Lafromboise	Oct., 1857	Reservation	1 mare	80.00	
	May, 1861	"	1 steer	12.00	
			1 steer	22.00	
	Oct., 1863	"	1 steer	30.00	
			1,440 rails	144.00	
	July, 1865	"	15 tons hay	75.00	
	Oct., 1866	"	1 pony	40.00	
			1 acre of potatoes, some cabbage.	50.00	
					453.00
50. Ed-wah-ge-zhick.	May, 1860	Reservation	1 stallion	200.00	
	Oct., 1861	"	1 pony	40.00	
					240.00
51. Prudence Wilson	July, 1855	Reservation	1 mare	150.00	
			1 mare	250.00	
			1 mare	250.00	
	May, 1849	"	1 horse	150.00	
	Aug., 1849	"	4 head cattle (1 bull, mate, 2 more).	40.00	
	1867	"	1 horse	100.00	
	1866	"	1 hog	7.00	
			2 hogs	20.00	
					967.00
52. Joseph Moa-yah-ko-se.	Oct., 1859	Reservation	1 horse	150.00	
	March, 1864	"	2 yoke of oxen	200.00	
					350.00
53. Mary Jane Pearce	Fall, 1866	Reservation	Dwelling house	400.00	
			Stable	50.00	
			Corncrib	50.00	
	Fall, 1866	"	1 mule, 1 cow	200.00	
					700.00
54. Anthony Navarre	Sept., 1867	Reservation	2 mules	350.00	
			1 wagon	80.00	
			1 double harness	15.00	
					445.00
55. Man-che-wah	Oct., 1859	Reservation	3 ponies	120.00	
	Feb., 1860	"	3 ponies	120.00	
					240.00

Names of claimants.	Date of depredations.	Place of depredations.	Kind of property taken or destroyed.	Value of each item.	Total values.
56. Mis-no-o-ge-mah ...	May, 1852	Reservation ..	1 pony	$40.00	
	May, 1858	"	1 pony	40.00	
	May, 1863	"	1 pony	40.00	
					$120.00
57. Joseph C. Wellfelt.	Nov., 1858.....	Reservation ..	18 hogs.....	226.80	
	Oct., 1859	"	450 rails	45.00	
	March, 1860 ...	"	1 mule	125.00	
	May, 1860	"	1 bull	30.00	
					426.80
58. Ke-wan-ka-ga	May, 1850	Reservation ..	1 horse	100.00	
					100.00
59. Teh-nas	April, 1851	Reservation ..	3 cows.....	105.00	
					105.00
60. William Martel	Nov., 1849	Reservation ..	5 cows, 5 calves	125.00	
	April, 1852	"	1 horse	150.00	
	May, 1852	"	1 horse	125.00	
	May, 1853	"	2 sows	20.00	
	Sept., 1855	"	3 hogs.....	37.50	
	May, 1854	"	1 cow	40.00	
	Oct., 1854	"	4 hogs.....	50.00	
	July, 1855.....	"	1 steer	20.00	
			1 heifer.....	20.00	
	June, 1855.....	"	4 hogs.....	20.00	
	Nov., 1855	"	3 hogs.....	37.50	
	June 1856.....	"	4 hogs.....	20.00	
	Sept., 1856	"	3 hogs.....	30.00	
	Oct., 1856	"	3 hogs.....	37.50	
	Oct., 1857	"	5 hogs.....	62.50	
	Sept., 1858	"	1 ox	55.00	
	July, 1859.....	"	1 cow	50.00	
	Sept., 1862	"	4 hogs.....	80.00	
	Oct., 1862	"	3 hogs.....	75.00	
	Nov., 1863.....	"	1 log house, 1 corncrib, 1 chicken house.	100.00	
9			3,000 rails	150.00	
			15 tons of hay.....	225.00	
	Sept., 1864	Reservation ..	1 cow.....	40.00	
	Sept., 1864	"	2 hogs.....	50.00	
	1862 and 1863..	"	Timber burned and destroyed.	150.00	
	1864 and 1865..				
	Sept., 1865	"	1 pony.....	60.00	
					1,830.00
61. Ma-Moske Muller..	Summer, 1851 .	Reservation ..	2 cows.....	60.00	
	May, 1852	"	2 mares.....	150.00	
			2 colts.....	90.00	
	June or July, 1857.	"	1 stallion	100.00	
					400.00
62. Wa-ska	Fall, 1850	Reservation ..	1 horse	160.00	
	Spring, 1853...	"	1 horse	150.00	
	Fall, 1853	"	1 pony.....	40.00	
	Spring, 1865...	"	2 heifers, 1 steer.....	60.00	
					410.00
63. Mary A. Burnett ..	April, 1859....	Reservation ..	3 head cattle.....	90.00	
	May, 1859.....	"	2 steers.....	50.00	
			1 cow.....	30.00	
	Oct , 1863	"	20 hogs.....	140.00	
	Oct., 1854	"	32 rails	224.00	
			2 log stables.....	200.00	
			2 log houses.....	200.00	
			1 stack hay.....	10.00	944.00
64. Ke-wan ka	April, 1849....	Reservation ..	1 horse	150.00	
	May, 1855.....	"	1 horse	100.00	
					250.00
65. Chah-Kah-be.....	April, 1857....	Reservation ..	2 ponies	80.00	
	Sept., 1865	"	1 heifer.....	20.00	
					100.00
66. Lisette Goseland...	May, 1853	Reservation ..	2 horses	300.00	
	April, 1855....	"	8 head cattle.....	200.00	
					500.00
67. We-zo Perish	May, 1864	Reservation ..	1 horse	150.00	
	July, 1865.....	"	1 horse	175.00	
					325.00
68. Peter Moose	July, 1853.....	Reservation ..	1 mare, 1 colt.....	60.00	
	March, 1864 ...	"	1 ox	40.00	
					100.00
69. Margaret Haas	Sept., 1864	Reservation ..	4 acres of growing corn.	100.00	
	Feb. & Mch., 1865.	"	50 soft-wood trees	750.00	
			2 hard-wood trees	40.00	
			8 acres growing corn ...	200.00	
	Sept. and Oct., 1865.	"	House.....	250.00	
	Dec., 1867	"	2,000 rails	120.00	
					1,460.00

Names of claimants.	Date of depredations.	Place of depredations.	Kind of property taken or destroyed.	Value of each item.	Total values.
70. Peter Le Clair	July 4, 1866	Reservation	1 mare	$120.00	
	1867	"	1 colt	50.00	
					$170.00
71. Na-mah-shkuk	June, 1852	Reservation	1 horse	120.00	
	June, 1854	"	1 mare	100.00	
	Oct., 1854	"	1 cow	30.00	
					250.00
72. Zozas-Pak-shkah	Feb., 1859	Reservation	6 horses	300.00	
					300.00
73. Kuh-bah Lafromboise.	June, 1856	Reservation	2 mares	300.00	
	May, 1857	"	1 mare	125.00	
					425.00
10 74. John Pah-mah-mee.	Spring, 1846	Reservation	3 horses	300.00	
	Spring, 1847	"	2 horses	200.00	
	Fall, 1847	"	2 horses	250.00	
	July, 1848	"	1 mare	50.00	
			1 colt	25.00	
			1 colt	20.00	
	March, 1860	"	2 horses	400.00	
	Winter, 1865 and 1866.	"	2 horses	300.00	
	Summer, 1866	"	3 horses	150.00	
	Summer, 1850	"	2 cows	100.00	
					1,795.00
75. Chas. Vieux	Fall, 1855	Reservation	1 overcoat	10.00	
			1 gun	25.00	
			1 mare	200.00	
			9 horses	900.00	
	Spring, 1861	"	1 horse	200.00	
	May, 1862	"	2 horses	300.00	
	Fall, 1859	"	4,000 rail (fence)	400.00	
					2,035.00
76. Eliza A. Bertrand	1849	Reservation	4 yoke oxen	300.00	
			5 cows	150.00	
			2 steers	50.00	
			2 heifers	50.00	
			2 heifers	35.00	
			1 steer	15.00	
					600.00
77. Ozette Tromble	Summer, 1853	Reservation	3 horses	300.00	
			1 horse	200.00	
			1 wagon, 1 double harness.	50.00	
			$15 in money	15.00	
					565.00
78. Louis Tromble	May, 1851	Reservation	16 horses	1,600.00	
			2 mules	300.00	
					1,900.00
79. N. Wat-ktose	July, 1863	Reservation	1 pony	50.00	
	Sept., 1866	"	1 mare	150.00	
					200.00
80. Pe-bije-mah	Oct., 1851	Reservation	1 horse	100.00	
	May, 1862	"	3 ponies	120.00	
	May or June 1863.	"	2 cows	60.00	
					280.00
81. John B. Perish	June, 1865	Reservation	7 horses	700.00	
					700.00
82. Louis Vieux	Spring, 1856	Reservation	2 horses	215.00	
	Feb., 1864	"	75 hogs	300.00	
	Feb., 1865	"	2 steers	100.00	
			Growing timber	50.00	
	March, 1865	"	Growing timber	200.00	
			1 cow	40.00	
	Feb., 1864	"	Timber	100.00	
					1,005.00
83. Kah-das-Shot-kuk	June, 1852	Reservation	2 horses	200.00	
			1 pony	40.00	
	March, 1862	"	1,000 rails	60.00	
	May, 1853	"	1 cow	30.00	
					330.00
84. Catharine Grimore	July, 1850	Reservation	5 sows	75.00	
	Aug., 1850	"	5 cows	200.00	
			1 bull	50.00	
	Oct., 1858	"	1 mare	75.00	
	May, 1860	"	1 cow	40.00	
	July, 1863	"	1 mare	125.00	
					565.00

Names of claimants.	Date of depredations.	Place of depredations.	Kind of property taken or destroyed.	Value of each item.	Total values.
11 85. Shaw-guee ..	May, 1850.....	Reservation ..	1 trunk	$5.00	
			1 blanket.....	30.00	
			1 blanket.....	40.00	
			1 set ear bobs	10.00	
			1 fob	4.00	
			1 lot of beads.....	25.00	
			1 pair moccasins	10.00	
			1 medal	5.00	
	April, 1859....	"	3 ponies	120.00	
					$249.00
86. Adelaide Bertrand.	May, 1858.....	Reservation ..	1 bull	50.00	
	Oct., 1862	"	1 breast pin	17.00	
			1 breast pin	3.50	
			100 hams	15.00	
					85.50
87. Maurice Lafromboise.	May, 1866.....	Reservation ..	3 cows	90.00	
					90.00
88. John B. Letendre ..	Oct., 1859.....	Reservation ..	2 horses	250.00	
			1 horse	100.00	
			2 horses	160.00	
			2 ponies	80.00	
					590.00
89. Eli G. Nadeau	May, 1849.....	Reservation ..	3 horses	300.00	
			2 ponies	80.00	
	Fall, 1857	"	2 horses	225.00	
	July, 1858	"	1 horse	75.00	
	Oct., 1859	"	4 horses	400.00	
	Dec., 1863.....	"	2 mares	280.00	
	March, 1864...	"	1 mule	150.00	
	May, 1864.....	"	Forage	160.00	
	Sept., 1864	"	2,500 rails	250.00	
	Nov., 1864	"	1 steer.....	40.00	
	Dec., 1864.....	"	1 steer.....	40.00	
					2,000.00
90. Na-bua-shkuk	May, 1850.....	Reservation ..	3 ponies	120.00	
	Summer, 1858.	"	4 ponies	140.00	
					260.00

No assignment of any or either of the above-named claims has been made, and each claimant is fully entitled to the amount herein claimed after all just credits and offsets.

Your petitioners therefore pray that in accordance with the treaty and acts of Congress set forth a judgment may be rendered in favor of each petitioner above named for the total sum set opposite his or her name in the tabular statement herein given, and that this petition may have priority of consideration of this court.

(Signed) ANTHONY F. NAVARREE.

DISTRICT OF COLUMBIA,
City of Washington, ss:

Before me, the undersigned, appeared Anthony F. Navarree, one of the petitioners above named, and the attorney in fact for all the petitioners above named, and made oath that he knows the contents of said petition, and that the matters therein stated are true, so far as the same are stated on his knowledge, and as to the matters therein stated on the knowledge, information, or belief of the petitioner, he believes them to be true.

(Signed) JOSEPH ROY,
Notary Public.

Dated Washington, January 2, 1892.

J. H. MCGOWAN,
Attorney for Claimants.

P. O. Address: 629 F street NW., Washington, D. C.

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EXHIBIT A.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 20, 1871.

SIR: I have the honor to transmit herewith a copy of a report dated the 6th instant, from Commissioner of Indian Affairs, together with the claims therein referred to of certain Pottawatomie citizens, for depredations committed upon their property while they were members of the Pottawatomie tribe of Indians.

The tenth article of the treaty with said Indians, of February 27, 1867, provides that the claims referred to, accompanied by evidence taken therein, shall be reported to Congress, with the amount found to be equitably due, in order that such action may be taken as shall be just in the premises.

The claims, with the evidence taken, and a schedule thereof, with the amounts allowed in each case as reported to the Department by Commissioner of Indian Affairs, are respectfully submitted to Congress for such action as the treaty contemplates.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Hon. JAS. G. BLAINE,
Speaker House of Representatives, Washington, D. C.

EXHIBIT B.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., December 6, 1871.

SIR: The tenth article of the treaty with the Pottawatomie Indians, of February 27, 1867 (Stat., vol. 15, p. 533), provides "that upon
13 the presentation to the Department of the Interior of the claims of said tribe for depredations committed by others upon their stock, timber, or other property, accompanied by evidence thereof, examination and report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises.

Under this provision of the treaty a number of claims were presented by late Agent Palmer, under date of December 24, 1869, extending as far back as the year 1846. These, after examination in this office, were, on the 27th of February, 1870, reported to the then Secretary of the Interior, with the statement that, from the loose and defective character of the evidence, it was impossible to reach an intelligent decision as to the amount equitably due any one of these claimants, and it was therefore recommended that the papers be returned to Superintendent Hoag for reexamination by the present agent for the Pottawatomie Indians, Mr. J. H. Morris. This recommendation was concurred in by the honorable Secretary, and the claims were accordingly returned on the 8th of March last, with instructions for the agent's guidance in the examination to be made by him; the claimants to submit new claims, or verify those already made, within a reasonable time.

In compliance with these instructions, a copy of which is herewith enclosed, Agent Morris transmitted to this office, under date of November 9, 1871, ninety claims, amounting in the aggregate to $49,547.80, and allowed by him in the sum of $48,332.80, with the statement that he has carefully investigated each separate claim, and examined the witnesses as to the character of the several claimants for truth and veracity, and that all claims which appeared to him to be spurious or dependent upon evidence of a doubtful character had been rejected.

I enclose herewith an abstract made in this office of the various claims now presented, showing the names of the claimants, with the amount claimed and amount awarded placed opposite their respective names.

A uniform course seems to have been adopted in the examina-
14 tion of the various cases with little or no variation. The claimant makes deposition before a notary public that he is a Pottawatomie citizen and had property stolen from him while a member of the tribe, specifying the articles thus lost, the circumstances connected therewith, and the value of the property at the time it was taken. This statement is corroborated by affidavits of two or three persons claiming to be conversant with the facts and circumstances of the case, and by the agent's certificate that the evidence was taken in his presence, that the valuation of the property lost is fair, and that he believes the claim to be equitable and just.

As the agent appears to have carried out his instructions in the investigation with which he was charged, I have the honor to submit the claims for consideration and appropriate action by the Department.

Very respectfully, your obedient servant,

F. A. WALKER, *Commissioner.*

Hon. C. DELANO,
Secretary of the Interior.

EXHIBIT C.

POTTAWATOMIE INDIAN AGENCY,
Eleventh month, 9, 1871.

To the Hon. COMMISSIONER OF INDIAN AFFAIRS,
Washington, D. C.:

Respectfully I herewith forward ninety-one claims of the Pottawatomie Indians for depredations committed upon their stock, timber, and other property, while living upon their reservation in Kansas, for the payment of which provision is made by the tenth article of the treaty of February 27, 1867.

In accordance with the instructions of the Honorable E. S. Parker, Commissioner of Indian Affairs, dated at Washington, D. C., March 8, 1870, I have given notice to all Indians having claims to present to come forward and prove them up, and also employed J. S. Merritt, a
15 notary public of Pottawatomie County, Kansas, duly commissioned and qualified to take affidavits.

For my guidance in ascertaining the true value of property upon the reservation, I called upon Alexander Peltier, Sidney W. Smith, and John D. Lasley, three disinterested, intelligent, and honest men, who have lived upon the reservation during the period covered by the losses

for which claim is made, and I consulted with them frequently during the taking of the proof of the claims, and have had them subscribe the accompanying affidavits. I have taken special care to guard against spurious claims that might have been presented, and I carefully investigated each claimant and the witnesses he introduced to prove up his or her claim as they presented themselves. I also inquired into the character of the claimants for truth and veracity, and such claims as were to all appearances spurious or dependent upon the testimony of witnesses not truthful for their substantiation I have rejected, and refused to present to the Department for consideration.

From the testimony of all, there were many depredations committed upon these Indians during the great immigration to California and Pike's Peak. Through this reserve was the main thoroughfare upon which many stock growers and farmers lived, over which these immigrants travelled, and they seemed to be lawless when they had reached so far west as to be beyond civilization; and there is no doubt in my mind, from the testimony of all the witnesses, that these Indians suffered very much at their hands. It appears that immense trains of immigrants passed along this road daily during the immigration, and were constantly driving off their stock and destroying their timber and other property, and the Indians were powerless to oppose them, there being no law in force to which they could appeal for protection.

Very respectfully,

J. H. MORRIS,
United States Indian Agent.

16 II. *Traverse—Filed January 13, 1898.*

In the Court of Claims of the United States—December term, A. D. 1897.

ANTHONY F. NAVARRE ET AL
vs.
THE UNITED STATES. } No. 17305.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimants herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

L. A. PRADT,
Assistant Attorney-General.

17 III.—*Findings of fact and conclusions of law.*

This case having been heard by the Court of Claims, the court, upon the evidence, finds the facts as follows:

(1) The claimaints are ninety individual members of the Pottawatomie tribe of Indians, who in 1869 and 1871 presented claims to the Department of the Interior for depredations committed by others upon their stock, timber, or other property.

(2) Claimants rely for recovery on these claims upon article 10 of the treaty made with the Pottawatomie tribe of Indians, February 28, 1867.

(15 Stat. L., 533.) And under said treaty these claims were by the Secretary of the Interior transmitted, with the evidence in support thereof, to Congress for its action thereon; and by Congress, under the acts of March 3, 1885, and March 3, 1891, said claims, with all evidence, documents, reports, and other papers pertaining to same, were referred to this court to be adjudicated and determined. (23 Stat. L., 372; 26 Stat. L., 1011.)

(3) Of these claims the following are for depredations committed by others upon the stock, timber, or other property of the claimants hereinafter respectively named while they resided upon their reservation in the Territory of Kansas. And said claimants are entitled to recover of the United States the amounts set opposite their names, respectively, which amount is found to be equitably due them:

Claim No. 2, Samah-gah, item 1, 1 pony, 1 saddle horse, 1 bridle, taken September, 1862, by United States soldiers, value $60.00

Claim No. 3, Ahgot, item 1, 1 pony, taken fall 1853 by immigrants, value $35; item 2, 2 horses, taken by white men November, 1862, value $250. Total 285.00

Claim No. 4, Louis H. Ogee, item 1, 4 ponies, taken in 1867, value $180; item 2, 1 bull, taken 1862, value $150; item 3, 4,000 new fence rails, destroyed November, 1863, value $240; item 4, 2 cows, 2 calves, taken in 1866, value $90; 1 steer, $30; 6 two-year olds, $120; 1 bull, $40; 1 mare, taken November, 1866, value $125. Total 975.00

Claim No. 5, Lucius R. Darling, item 1, 4 ponies, value $160; 1 mare, value $75; 1 horse, value $125, taken May, 1852; item 2, 1 cow, 1 calf, taken May, 1860, value $45; item 3, 2,000 fence rails, May, 1863, value $120. Total 525.00

Claim No. 6, M tah-mah, item 1, 2 horses, taken April, 1852, value $175; item 2, 2 ponies, June, 1852, value $80; item 3, 1 calf, May, 1854, value $15; item 4, 1 horse, saddle, and bridle, taken October, 1863, value $150. Total 420.00

Claim No. 7, Samuel Cummings, 4 acres of red elm and walnut timber, destroyed in 1862, $140; item 2, 1,280 fence rails, $76; 120 bushels of corn, value $60. Total 276.00

Claim No. 10, Antwain, item 2, 2 horses, taken April, 1858, $250. Total 250.00

18 Claim No. 11, Shak-we, item 1, 3 ponies, value $120; 1 horse, $100; taken May, 1850. Total 220.00

Claim No 13, M-kuh-da-mko-qua, item 1, 5 ponies, taken July, 1852, value $200; item 2, 3 fat hogs, value $36; 3 shoats, $8; taken November, 1866. Total 244.00

Claim No. 14, Anthony Tessier, item 1, yoke of oxen, taken May, 1857, value $85; item 2, 1 cow, taken May, 1863, value $45. Total 130.00

Claim No. 16, Margaret Fregon, item 1, 2 horses, taken Marc, h1862, value $200; item 3, 1 stallion, taken May, 1863, value $50; item 4, 1,500 rails, October, 1865, value $90; item 5, 75 trees, saw, and rail timber, October and November of 1866, value $300. Total 640.00

Claim No. 17, M. B. Beaubien, item 1, 2 yoke of work cattle, May, 1851, value $150; item 2, 3 milch cows, $120, 2 heifers, $75, 1 steer, $40, depredation June, 1852; item 3, May, 1859, 1 horse, $150; item 4, 1 mare, $150, 1 gold watch, $120, January, 1861; item 5, 1 horse, $125, January, 1862; item 6, 12 ponies, $480, July, 1864. Total 1,410.00

Claim No. 18, James Baldwin, item 1, 1 horse, taken January, 1862, value $150 ..... 150.00

Claim No. 20, Kah-dot, item 1, January, 1864, 2 cows, $75; August, 1865, 1 pony, $40; March, 1866, 2 mare ponies, $80. Total 195.00

Claim No. 21, Mitchell Wilmett, June, 1860, post and rail timber. Total ... 400.00

Claim No. 22, E. R. Kennedy, fall 1860, item 2, 1 horse, 1 saddle, 1 bridle, $125. Total 125.00

Claim No. 24, John S. Young, September, 1856, item 1, stock of dry goods and groceries, value $2,000; fall of 1863, item 2, 1 stallion, $150; 1 mare, $125; 1 pony, $40; October, 1866, item 3, 7,680 fence rails, $460.80; corn, $200. Total 2,975.80

Claim No. 25, Jane Kennedy, item 2, July, 1863, 1 pony, $40. Total 40.00

Claim No. 26, Mitchell Laframboise, item 4, August, 1866, 2 mares, 2 horses, $400. Total $400.00

Claim No. 27, Me-Yain co, August, 1854, 3 horses and 6 ponies, $495. Total. 495.00

Claim No. 28, Mah-jwas, July, 1849, item 1, 1 horse, $125; item 2, spring 1852, 1 horse, $125; item 4, spring 1863, 1 pony, $40; item 5, summer 1863, 1 stallion, $80. Total 370.00

Claim No. 29, Phas-Kaw-we, May, 1858, item 1, 2 cows, 1 calf, $75; item 2, August, 1860, 1 pony, $50. Total 125.00

Claim No. 30, Pam-bo-go, May, 1853, 1 pony, $40. Total 40.00

Claim No. 33, Ah-got, May, 1853, item 1, 2 horses, $200; October, 1860, item 2, 1 horse, $100. Total 300.00

Claim No. 34, John Neely, April, 1851, item 1, 1 horse, $95; 1 stallion, $60; 1 horse, $80. Total 235.00

Claim No. 35, Azhnick Pes-qua-je, spring of 1864, 2 horses, $135. Total... 135.00

Claim No. 36, Sah-gah-kunk, spring 1859, 2 horses, $225. Total 225.00

Claim No. 37, Sah-gah, November, 1855, item 1, 4,500 rails, $225; June, 1856, item 2, 3 horses, $375; February, 1862, item 3, 1 horse, $125; July, 1862, item 4, 1 horse, $135; spring 1862, 1 hog, $15; November, 1862, 1 hog, $22.50; fall of 1864, 3 hogs, $45. Total 942.50

Claim No. 39, Nah-min-nuk-skuk, spring 1866, 1 horse, $125. Total 125.00

Claim No. 40, Francis X. Bergeron, October, 1864, item 1, 12 head of cattle, $300; fall 1862, item 3, 50 bushels of corn, $25; 30 chickens, $7.50; 1 hog, $25; 3 shoats, $18; 250 rails, $12.50. Total 388.00

Claim No. 41, Blackbird, spring 1850, item 1, 2 steers, $30; 1 steer, $15. Total 45.00

Claim No. 42, William Phelps, spring 1854, item 1, 1 horse, $100; item 2, 1859, 1 bull, $20. Total 120.00

Claim No. 43, Wahb-nim, fall 1852, item 1, 2 horses, $250; spring 1859, 1 horse, $100; spring 1862, item 3, 1 horse, $125. Total 475.00

Claim No. 44, Emily Wilmett, fall 1851, 2 cows and calves, $70; September, 1860, item 3, 1 cow, $40; November, 1864, 2 hogs, $60. Total 170.00

Claim No. 45, Wesley Lewis, September, 1864, item 1, 1 steers, $160; 4 cows, 4 calves, $160; December, 1860, 1 pair boots, 1 suit clothes, some flour and meal, $100; $20 in gold. Total 440.00

Claim No. 46, Wezo Burnett, May 1866, item 2, 1 mare, $140. Total 140.00

Claim No. 47, Narcisse Vieux, July, 1856, item 1, 1 cow, $30; 1 steer, $20; 2 calves, $15. Total 65.00

Claim No. 48, E. Beaubien, September, 1863, 1 ox, $35; October, 1863, 1 horse, $100. Total 135.00

Claim No. 49, Mary Laframboise, October, 1857, item 1, 1 mare, $80; May, 1861, item 2, 1 steer, $12, 1 steer, $22, 1 steer, $30; October, 1863, 1,440 rails, $86; 15 tons hay, $75; October, 1866, item 5, 1 acre potatoes, some cabbage, $50. Total 355.00

19 Claim No. 50, Ed-wah ge-zhick, May, 1860, item 1, 1 stallion, $200; October, 1861, item 2, 1 pony, $40. Total 240.00

Claim No. 51, Prudence Wilson, July, 1850, item 1, 1 mare, $150; 1 mare, $250; 1 mare, $250; 1866, item 5, 1 hog, $7, 2 hogs, $20. Total 667.00

Claim No. 53, Mary Jane Pierce, fall 1866, item 1, dwelling house, $400; stable, $50; cornerib, $50. Total 500.00

Claim No. 56, Mis-no-o-ge-mah, May, 1863, item 3, 1 pony, $40. Total 40.00

Claim No. 57, Joseph E. Welfelt, November, 1858, item 1, 18 hogs, $226.80; item 2, October, 1859, 450 rails, $27. Total 253.80

Claim No. 58, Ke-wan-ka-ga, May, 1850, 1 horse, $100. Total 100.00

Claim No. 59, Teh-nas, April, 1851, 3 cows, $105. Total 105.00

Claim No. 60, William Martel, May, 1852, item 3, 1 horse, $125; May, 1853, item 4, 2 sows, $20; item 5, September, 1853, 3 hogs, $37.50; item 7, October, 1854, 4 hogs, $50; item 8, July, 1855, 1 steer, $20, 1 heifer, $20; item 9, June, 1855, 4 hogs, $20; item 12, November, 1855, 3 hogs, $37.50; June, 1856, item 13, 4 hogs, $20; September, 1856, 3 hogs, $30; October, 1856, 3 hogs, $37.50; October, 1857, 5 hogs, $62.50; September, 1862, 4 hogs, $80; October, 1862, 3 hogs, $45; item 19, 1862, 1 log house, 1 cornerib, 1 chicken house, $100, 3,000 rails, $150; 15 tons hay, $120; item 20, September, 1864, 1 cow, $40; item 21, 1864, 2 hogs, $40. Total 1,055.00

Claim No. 61, Ma-Moske-Mul-ler, item 2, May, 1852, 2 mares, $150. Total.. 150.00

Claim 62, Wa-ska, item 2, spring 1852, 1 mare, $150. Total 150.00

Claim No. 63, Mary A. Burnett, item 1, April, 1859, 3 head cattle, $90; item 3, October, 1863, 20 hogs, $140; item 4, October, 1854, 3,200 rails, $132; 2 log stables, $200; 2 log houses, $200; 1 stack hay, $10. Total 772.00

Claim No. 64, Ke-wan-ka, item 1, April, 1849, 1 horse, $150; May, 1855, item 2, 1 horse, $100. Total 250.00

Claim No. 65, Chah-kah-be, item 2, September, 1865, 1 heifer, $20. Total.. $20.00
Claim 66, Lisette Goseland, item 2, April, 1855, 8 head cattle, $200. Total. 200.00
Claim No. 67, We-zo-Perish, item 2, July, 1865, 1 horse, $125. Total 125.00
Claim No. 68, Peter Moose, item 1, July, 1853, 1 mare and colt, $60; item 2, March, 1864, 1 ox, $40. Total 100.00
Claim No. 69, Margaret Haas, item 1, 1864, 4 acres growing corn, $50; item 2, February and March, 1865, 50 soft-wood trees, $375; 2 hard-wood trees, $25; 8 acres growing corn, $100; item 3, September and October, 1865, house, $250. Total 800.00
Claim No. 71, Na-mah-shkuk, item 1, June, 1852, 1 horse, $120; item 3, October, 1854, 1 cow, $30. Total 150.00
Claim No. 72, Zozas-Pak-shkah, item 1, February, 1859, 6 horses, $300. Total 300.00
Claim No. 74, John-Pah-mah-mee, item 5, March, 1860, 2 horses, $250; item 6, winter of 1865 and 1866, 2 horses, $250; item 8, summer 1850, 2 cows, $80. Total 580.00
Claim No. 75, Charles Vieux, item 1, fall 1855, 1 mare, $125; horses, $700. Total 825.00
Claim No. 76, Eliza A. Bertrand, 1849, 4 yoke oxen, $300; 5 cows, $150; 2 steers, $50; 2 heifers, $50; 2 heifers, $35; 1 steer, $15. Total 600.00
Claim No. 77, Ozette Tromble, summer 1853, 3 horses, $300; 1 horse, $125; 1 wagon, 1 double harness, $50; $15 in money. Total 490.00
Claim No. 78, Louis Tromble, 16 horses, $1,600; 2 mules, $250. Total 1,850.00
Claim No. 80, Pe-bije-mah, October, 1851, 1 horse, $100; May, 1862, 3 ponies, $120; May or June of 1863, 2 cows, $60. Total 280.00
Claim No. 82, Louis Vieux, item 2, February, 1864, 75 hogs, $300; February, 1865, 2 steers, $100; growing timber, $25; March, 1865, growing timber, $100; 1 cow, $40; February, 1864, timber, $50. Total 615.00
Claim No. 83, Kah-des-shot-kuk, June, 1852, 2 horses, $200; 1 pony, $40; March, 1862, 100 rails, $60; May, 1853, 1 cow, $30. Total 330.00
Claim No. 84, Cathrine Grimore, item 1, July, 1850, 5 sows, $75; item 3, October, 1858, 1 mare, $75; item 4, May, 1860, 1 cow, $40. Total 190.00
Claim No. 85, Shaw-guee, item 2, April, 1859, 3 ponies, $120. Total 120.00
Claim No. 86, Adelaide Bertrand, item 1, May, 1858, 1 cow, $25. Total..... 25.00
Claim No. 87, John B. Letendre, October, 1859, 2 horses, $250; 1 horse, $100; 2 horses, $160; 2 ponies, $80. Total 590.00
Claim No. 88, Maurice Laframboise, item 1, May, 1866, 3 cows, $90. Total. 90.00
Claim No. 89, Eli G. Nadeau, item 1, May, 1849, 3 horses, $300; 2 ponies, $80; fall 1857, 2 horses, $225; July, 1858, 1 horse, $75; October, 1859, 4 horses, $400; December, 1863, 2 mares, $250; March, 1864, 1 mule, $150; September, 1864, 2,500 rails, $150; November, 1864, 1 steer, $40; December, 1864, 1 steer, $40. Total 1,710.00

20 (4) The property for which it is found in the third finding of fact that the claimants are entitled to recover was taken or destroyed by others than members of the Pottawatomie tribe of Indians and not returned or paid for.

(5) Of the claims specified in the third finding of fact by the court, on which the findings are in favor of recovery, the following are for property taken by other tribes of Indians:

Claim 4. Louis H. Ogee, item 1, 4 ponies, taken by Kaws.
Claim 5. Lucius R. Darling, item 1, 4 ponies, a mare, a horse, taken by Kaws.
Claim 7. Samuel Cummings, item 1, timber taken by Kickapoos.
Claim 11. Shak-we, 3 ponies, a horse, taken by Pawnees.
Claim 13. M-kuh-da-mho-gua, item 1, 5 ponies, taken by Kaws.
Claim 17. M. B. Beaubien, item 2, 3 cows, 2 heifers, a steer, taken by Kaws; item 6, 12 ponies, taken by Kaws.
Claim 20. Kah-dot, item 2, a pony, taken by Kaws.
Claim 29. Phas-kah-we, item 2, a pony, taken by Pawnees.
Claim 35. Azhnick-Pes-gua-je, 2 horses, taken by Pawnees.
Claim 36. Sah-gah-kunk, 2 horses, taken by Pawnees.
Claim 42. William Phelps, a horse, taken by Pawnees.
Claim 43. Wahb-nim, item 1, 2 horses, taken by Winnebagoes.
Claim 47. Narcisse Vieux, item 1, a cow, a steer, 2 calves, taken by Kaws.
Claim 58. Ke-wau-ka-ga, a horse, taken by Pawnees.
Claim 68. Peter Moose, item 1, mare and colt, taken by Kaws.
Claim 72. Zozas-Pak-shkah, 6 horses, taken by Pawnees.

Claim 74. John Pah-mah-me, item 5, 2 horses, taken by Pawnees.
Claim 78. Louis Tromble, 16 horses, 2 mules, taken by Osages.
Claim 80. Pe-bije-mah, item 2, 3 ponies, taken by Kaws.
Claim 85. Shaw-gnee, item 2, 3 ponies, taken by Osages.
Claim 89. Eli G. Nadeau, item 1, 3 horses, 2 ponies, taken by Pawnees.

(6) That of claims embraced in the third finding of fact by the court in favor of claimants the following are for losses by fire, due to the negligence or design of white men:

Claim 4. Louis H. Ogee, item 3, 4,000 fence rails.
Claim 5. Lucius R. Darling, item 3, 2,000 fence rails.
Claim 7. Samuel Cummings, item 2, 1,280 fence rails, 120 bushels of corn.
Claim 16. Margaret Fregon, item 4, 1,500 fence rails.
Claim 21. Mitchell Wilmett, post and rail timber.
Claim 24. John S. Young, item 3, 1,768 fence rails, corn.
Claim 37. Sah-gah, item 1, 4,500 fence rails.
Claim 49. Mary Laframboise, item 3, 1,440 fence rails, 15 tons hay.
Claim 53. Mary Jane Pearce, item 1, dwelling house, stable, cornerib.
Claim 57. Joseph C. Wellfelt, item 2, 450 fence rails.
Claim 60. William Martel, item 19, 3,000 fence rails, log house, cornerib, chicken house, 15 tons hay.
Claim 63. Mary A. Burnet, item 4, 3,200 fence rails, 2 log stables, 2 log houses, a stack of hay.
Claim 69. Margaret Haas, item 3, house.
Claim 89. Eli G. Nadeau, item 8, 2,500 fence rails.

As to the following claims it is not satisfactorily shown by the evidence that the depredations were committed by others than members of the Pottawatomie tribe of Indians, and claimants are not entitled to recover for same.

Claim 1. Kok-sk-Kuk-wid, 1 American horse, 1 black mare.
Claim 2. Shumah-gah, item 2, 1 pony.
Claim 9. Munk-quet, 2 ponies, 1 horse.
Claim 10. Antwain, item 1, 2 horses; item 3, 1 horse; item 4, 2 mares, 1 colt; item 5, 3 horses.
Claim 12. Wah-kas, items 1 and 2, a mare and pony.
Claim 15. Kahu-sah-qua, 3 horses.
Claim 16. Margaret Fregon, item 2, 1 mare.
Claim 18. James Baldwin, item 2, 1 mare and 3 ponies, because since treaty.
Claim 19. Josett Vanarsdale, items 1 and 2, horse and span horses.
21 Claim 22. E. R. Kennedy, item 1, 1 mare; item 2, 1 horse; item 3, 1 colt alleged to have been killed by Union Pacific Railway. As to this item it is not shown that the railway company was liable for the killing or committed any trespass or depredation. Item 4, 1 cow; item 5, 1 steer; item 6, 1 cow; item 7, 1 steer; item 8, 1 cow.
Claim 23. Thomas J. Lazzell, items 1 and 2, 2 horses, 1 mare, and 1 colt.
Claim 25. Jane Kennedy, item 1, 1 horse.
Claim 26. Mitchell Laframboise, 4 mares and colts, 1 stallion; item 2, 1 stallion; item 3, 1 horse; item 5, 1 mowing machine, 5 pitchforks, 1 harness, 5 tons hay.
Claim 28. Mah-kwas, item 3, 1 horse, 1 pony.
Claim 30. Pam-bo-go, item 2, 1 horse.
Claim 31. Napoleon B. Bertrand, item 1, 3 cows, 1 bull, 1 horse, 2 colts, 1 mare.
Claim 32. Sahg-mog, item 1, 1 mare, 2 ponies.
Claim 37. Sah-gah, item 8, pigs, vegetables, damage done property. As to this item, proof is too vague and uncertain.
Claim 38. Nah-gdo-nuck, item 1, 1 horse; item 2, 2 ponies; item 3, 1 mare.
Claim 39. Nah-nim-nuk-skuk, item 2, 1 horse.
Claim 40. Francis X. Bergeron, item 2, 1 bull.
Claim 41. Blackbird, item 2, 1 horse.
Claim 44. Emily Wilmett, item 1, 1 mare.
Claim 45. Wesley Lewis, item 3, 2 horses, 11 head cattle.
Claim 46. Wezo Burnett, item 1, 1 mare.
Claim 47. Narcisse Vieux, item 2, 1 horse.
Claim 48. E. Beaubien, item 1, 3 ponies; item 4, 700 rails.
Claim 49. Mary Laframboise, item 4, 1 pony.
Claim 51. Prudence Wilson, item 2, 1 horse; item 3, 4 head cattle; item 4, 1 horse. This depredation occurred since the treaty of 1867.

Claim 52. Joseph Moa yah-ko-se, 1 horse, 2 yoke oxen.
Claim 53. Mary Jane Pearce, item 2, 1 mule, 1 cow.
Claim 54. Anthony Navarre, 2 mules, 1 wagon, 1 double harness. Depredation as to this claim committed after treaty of 1867.
Claim 55. Nan-che-wah, items 1 and 2, 6 ponies.
Claim 56. Mis-no-o-ge-mah, items 1 and 2, 2 ponies.
Claim 57. Joseph C. Wellfelt, items 3 and 4, 1 mule, 1 bull.
Claim 60. William Martel, item 1, 5 cows, 5 calves; item 2, 1 horse; item 6, 1 cow; item 15, 1 ox; item 16, 1 cow; item 22, timber; item 23, 1 pony.
Claim 61. Ma moske-Mul-ler. item 1, 2 cows; item 3, 1 stallion.
Claim 62. Wa-ska, item 1, 1 horse; item 3, 1 pony; item 4, 2 heifers, 1 steer.
Claim 63. Mary A. Burnett, item 2, 2 steers.
Claim 65. Cha-kah-be, item 1, 2 ponies.
Claim 66. Lisette Goseland, item 1, 2 horses.
Claim 67. We-zo Perish, item 1, 1 horse.
Claim 69. Louis H. Ogee, item 4, 2,000 rails. In cause since treaty.
Claim 70. Peter Le Clair, 1 mare, 1 colt.
Claim 71. Na-mah-shkuk, item 2, 1 mare.
Claim 73. Kuh-buh-Laframboise, items 1 and 2, 3 horses.
Claim 74. Pah-mah-mee, items 2, 3, and 4, 7 horses, 1 mare, 2 colts.
Claim 75. Chas. Vieux, items 2, 3, 4, 3 horses, 4,000 rails.
Claim 79. N. Wat-ktose, items 1 and 2, 1 pony, 1 mare.
Claim 81. John B. Perish, 7 horses.
Claim 82. Louis Vieux, item 1, 2 horses.
Claim 84. Cathrine Grimore, item 2, 5 cows, 1 bull; item 5, 1 mare.
Claim 85. Shaw-guee, 1 trunk, 2 blankets, 1 set ear bobs, 1 fob, 1 lot beads, 1 pair moccasins, 1 medal.
Claim 86. Adelaide Bertrand, item 2, 2 breastpins, 100 hams.
Claim 89. Eli G. Nadeau, item 7, forage.
Claim 90. Na-bau-shkuk, items 1 and 2, 7 ponies.
Claim 37. Sah-gah. That part of item 2, $150 for expenses in recovering horse, and of item 3, $50, also for expenses in effort to recover horse, are not for depredations committed by others, and are rejected.

CONCLUSIONS OF LAW.

Upon the foregoing findings of fact the court decides as conclusions of law:

First. That the respective claimants named in the third finding of fact are entitled to recover judgments against the United States on the items therein named for the amounts set opposite their names, respectively, all other items and claims not therein specified being disallowed, said several judgments being as follows:

Samah-gah	$60.00	Pam-bo-go	$40.00
Ahgot	285.00	Ah-got	300.00
Louis H. Ogee	975.00	John Neely	235.00
Lucius R. Darling	525.00	Azhnick Pes-qua-je	135.00
M-tah-mah	420.00	Sah-gah-kunk	225.00
Samuel Cummings	276.00	Sah-gah	942.50
Antwain	250.00	Nah-min-nuk-skuk	125.00
Shak-we	220.00	Francis X. Bergeron	388.00
M-kuh-da-mko-qua	241.00	Blackbird	45.00
Anthony Tessier	130.00	William Phelps	120.00
Margaret Fregon	640.00	Wahb-nim	475.00
M. B. Beaubien	1,410.00	Emily Wilmett	170.00
James Baldwin	150.00	Wesley Lewis	440.00
Kah-dot	195.00	Wezo Burnett	140.00
Mitchell Wilmett	400.00	Narcisse Vieux	65.00
E. R. Kennedy	125.00	E. Beaubien	135.00
John S. Young	2,975.80	Mary Laframboise	355.00
Jane Kennedy	40.00	Ed-wah-ge-zhick	240.00
Mitchell Laframboise	400.00	Prudence Wilson	677.00
Me-Yain-co	495.00	Mary Jane Pierce	500.00
Mah-jwas	370.00	Mis-no-o-ge-mah	40.00
Phas-Kaw-we	125.00	Joseph E. Welfelt	253.80

Ke-wan-ka-ga	$100.00	John-Pah-mah-mee	$580.00
Teh-nas	105.00	Charles Vieux	825.00
William Martel	1,055.00	Eliza A. Bertrand	600.00
Ma-Moske-Mul-ler	150.00	Ozette Tromble	490.00
Wa-ska	150.00	Louis Tromble	1,850.00
Mary A. Burnett	772.00	Pe-bije-mah	280.00
Ke-wan-ka	250.00	Louis Vieux	615 00
Chah-Kah-be	20.00	Kah-das-shot-kuk	330.00
Lisette Goseland	200.00	Cathrine Grimore	190.00
We-zo-Perish	125.00	Shaw-guee	120.00
Peter Moose	100.00	Adelaide Bertrand	25.00
Margaret Haas	800.00	John B. Letendre	590.00
Na-mah-shkuk	150.00	Maurice Laframboise	90.00
Zozas-Pak-shkah	300.00	Eli G. Nadeau	1,710.00

Second. That under article 10 of the treaty of February 28, 1867, depredations committed by others than the members of the Pottawatomie tribe of Indians or nation upon their stock, timber, or other property, prior to the date of this treaty, are intended and excluded in the term "claims" as used in said article 10 of said treaty.

Third. Claims presented for expenditures alleged to have been made in efforts to recover property alleged to have been stolen, claims for alleged acts of cheating or swindling by which under contracts such claimants have been defrauded out of their property, and the claim for the killing of a colt by the Union Pacific Railway, it not being alleged or shown that said railway company was liable for such, are not depredations within the meaning of article 10 of said treaty, and are therefore disallowed.

23 IV.—*Opinion of the court.*

HOWRY, J., delivered the opinion of the court:

The plaintiffs, ninety in number, are of the Pottawatomie tribe of Indians, who resided upon their reservation in the Territory (afterwards State) of Kansas, have brought this suit to recover certain claims, aggregating $48,325, against the United States, alleged to be due them by virtue of article 10 of the treaty with said tribe of Indians, of date February 27, 1867, promulgated August 7, 1868. (15 Stat. L., 533.) Said article is as follows:

"It is further agreed upon the presentation to the Department of the Interior of the claims of said tribe for depredations committed by others upon their stock, timber, or other property, accompanied by evidence thereof, examination and report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises."

This treaty of 1867 was intended for, and in fact was, a full settlement between the United States and the Pottawatomie tribe. The Indians relinquished all claim for future annuities and became citizens. Lands were allotted to them in severalty and the United States contracted with reference to the claims which the said Indians had against others.

The acts referring the claims to this court followed the report of the Secretary of the Interior to Congress after their investigation.

In pursuance of the provisions of said article 10 plaintiffs presented to the Interior Department these claims on December 24, 1869. By reason of the loose and defective character of the evidence submitted in

their support the papers pertaining to the claims were returned by the Interior Department for reinvestigation and examination by the agent, Mr. J. H. Morris, for said Indians. This agent examined the claims and took the affidavits of each claimant and other witnesses in support thereof, and transmitted them, with all evidence taken by him, to the Commissioner of Indian Affairs, under date of November 9, 1871, attaching his certificate to each claim, recommending for allowance of said claims, as just, the sum or $48,332.80 in the aggregate.

On the 20th of December, 1871, the Interior Department, in accordance with the treaty of February 27, 1867, reported all of said claims to Congress, accompanied with the evidence taken in support of same, "for such action as the treaty contemplated." Congress took no final action thereon further than to have them investigated by a special committee, until March 3, 1885, when it referred said claims to this court for adjudication. This original act referring the claims provided, "And said court shall, in determining said cause, ascertain the amounts due, and to whom due, by reason of actual damage sustained, and said cause shall be tried without further delay as hereinbefore provided." (23 Stat. L., 372.)

Plaintiffs do not seem to have availed themselves of the right to bring suit under the foregoing act. The authority not being given for the consideration of any but strictly legal evidence, the presumption is that plaintiffs did not make use of the first jurisdictional statute for that reason. Congress, however, in an act entitled "An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety-two, and for other purposes," approved March 3, 1891, further enacted as follows:

"That the last clause of the subdivision entitled 'Pottawatomies' in the act entitled 'An act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling the treaty stipulations with various Indian tribes for the year ending June thirtieth, eighteen hundred and ninety-one, of volume twenty-three, of the Statutes at Large,' to be amended to read as follows:

"'That the claims of certain individual members of the Pottawatomie Nation of Indians, their heirs or legal representatives, for the depredations committed by others upon their stock, timber, or other property, reported to Congress, under the tenth article of the treaty of
24 August 7, 1868, be, and the same are hereby, referred to the Court of Claims for adjudication. And said court shall, in determining said cause, ascertain the amounts due, and to whom due, by reason of actual damage sustained.

"'And all papers, reports, evidence, records, and proceedings relating in any way to said claims now on file or of record in the Department of the Interior or any other department, or on file of record in the office of the Secretary of the Senate, or the office of the Clerk of the House of Representatives, shall be delivered to said court, and in considering the merits of the claims presented to the court all testimony and reports of special agents or other officers and other papers now on file or of record in the departments or Congress shall be considered by the court, and such value awarded thereto as in its judgment is right and proper.'"

There are two general classes of claims for which recovery is sought:
(1) For property taken or destroyed by white men.
(2) For property taken or destroyed by Indians belonging to other tribes or nations than the Pottawatomie.

While the petition on behalf of plaintiffs alleges that the depredations for which suit is brought were committed by white men, yet the proof develops that a large number of the depredations were committed by Indians belonging to other tribes. It is earnestly and ably insisted by counsel for the Government that under article 10 of the treaty of 1867 it was only intended to provide for the payment of depredations committed by white men; that the word "others" used in said article referred to and is restricted to the acts of white men only. In support of this view it is argued that "claims," as used in said article, refers to such claims only, as by some previous statute Congress had authorized payment by the Government; that such claims must have had a legal existence for payment against the Government prior to the treaty of 1867; that the treaty of 1867 did not intend to create liability for any new claim or depredation other than for which liability had been previously recognized by statute, and that the only claims for which payment is contemplated or authorized under article 10 of the treaty of February 28, 1867, are such as are provided for under act of June 30, 1834 (4 Stat. L., 731). While this argument is pressed with much force upon the court, we do not think it sound. The treaty of February 28, 1867, made with this tribe of Indians, was a contract between the parties thereto, and in all its stipulations, which are self-executing, it has the force and effect of a legislative enactment. (Whitney v. Robertson, 124 U. S., 194.)

In ascertaining the meaning or intention of the contracting parties, the same rules must be adopted as are applicable in construing legislative enactments. The meaning of the terms used in the treaty must be drawn from the context of the treaty itself as far as possible. The term "others," as used in article 10 of said treaty in its ordinary accepted meaning, refers to "something different from that which has been specified, additional." In this case the only parties being treated with are the Pottawatomie tribe of Indians, and if it had been intended that the term "others" was to be restricted to white persons, such a restriction would have been incorporated in the treaty; and there is nothing in the context of the treaty to indicate that any such restriction was to be given that term. The contracting parties only had the power or right to engraft such restrictions upon the ordinary meaning of the language used by them. The term, as used, evidently embraces all persons other than members of the Pottawatomie tribe of Indians.

If the term, as used, was ambiguous or doubtful, this interpretation placed upon it is strengthened by reference to the acts of Congress
25 of 1830 and 1834 (4 Stat. L., p. 411–731); and also to the treaty made with these Indians in 1846 (9 Stat. L., p. 853). Likewise it is strengthened by that rule enunciated by Vattel in treaty construction which declares "The words of a party should be construed in accordance with the general reasons and motives of the agreement." And again, In re Ross, 140 U. S., 453, where the court said, in referring to a treaty, "All of its provisions must be examined in the light of attendant and surrounding circumstances." And again, under the well-established

rule that, as between the United States and the Indians, treaties are to be liberally construed in favor of the Indians. (Worcester v. Georgia, 6 Pet., 515; Kansas Indians, 5 Wall., 737; Choctaw Nation v. United States, 119 U. S., 1, 28.) When we consider the situation of the parties at the time of the treaty of 1867, the past history and friendly disposition of the Pottawatomie tribe, and what the Government was probably willing to do in recognition of the friendliness of the tribe, we think it certain that the parties contracted with reference to depredations complained of by the plaintiffs independent of the trade and intercourse act of 1834.

The first article of the treaty of 1846 contains this stipulation: "It is solemnly agreed that the peace and friendship which so happily exists between the people of the United States and the Pottawatomie tribe of Indians shall continue forever, the said tribe of Indians giving assurance hereby of fidelity and friendship to the Government and people of the United States, and the United States giving at the same time promise of all proper care and parental protection." Under this treaty the promise of care and protection given to these Indians is general in its terms and is restricted as against no particular parties; and under this treaty these Indians were removed by the United States to their reservation in the Territory of Kansas, where the depredations complained of in this suit were committed. This reservation was beyond the protection of the civil laws of the Government, and on that reservation they were more liable to be subject to depredations, not only from white people, but from other uncivilized tribes of Indians; therefore, this promise of care and protection was extended to them by the United States. Under the act of Congress of May 18, 1830, which was an act "to provide for the exchange of lands with any of the Indians residing in any of the States or Territories after their removal to the west of the Mississippi River," it was provided "that it shall and may be lawful for the President to cause such tribe or nation to be protected at their new residence against all interruptions or disturbances from any other tribe or nation of Indians, or from any other person or persons whatever," thereby expressly obligating the Government, through the President, to extend to such Indians protection against interruptions or disturbances from any and all persons or tribes of Indians.

This act and the subsequent treaty of 1846 clearly indicates the policy of the United States toward these Indians—the protection of the strong arm of the Government being promised them as against all persons or tribes of Indians. This being the undertaking on the part of the Government by its treaty with these Indians in 1846, and the general policy of the Government toward other Indians who might be removed beyond the Mississippi River, and thereby become subject to depredations of other hostile Indians or lawless white men, as indicated by the act
26 of 1830, when the treaty of 1867 was made with this tribe of Indians, if the Government intended to withdraw or restrict the protection previously promised to these Indians it would have indicated such purpose by incorporating into the terms of the treaty such restrictions or withdrawal of protection. This view of the intention of the Government under article 10 of the treaty of 1867 is further confirmed

by reference to the act of June 30, 1834, above referred to, which was "An act to regulate trade and intercourse with the Indian tribes and preserve peace on the frontiers." Under that act Congress expressly limits the liability of the Government to depredations against Indians committed by white persons, and further restricts its liability for eventual indemnification to cases in which the subject of the depredation committed could not be recovered from parties committing the same. (United States v. Perryman, 100 U. S., 235.)

There Congress clearly expresses its intention that the Government shall only be liable under said act to the particular cases therein pointed out. Therefore, when the treaty with these Indians of February 28, 1867, was made, if the restrictions as to the particular classes of claims for which the Government was to be liable, contained in the act of June 30, 1834, were to determine the character of claims that were authorized to be presented for payment under article 10 of said treaty, such restrictions should have been engrafted into the treaty; otherwise it must be presumed that the intention of the contracting parties was not to place such restrictions upon claims authorized to be presented under that treaty. For the treaty having the force and effect of a legislative enactment the courts can not interpolate therein provisions of other acts of Congress. If only such claims as could arise under act of 1834 were included under article 10 of the treaty of 1867, as contended by counsel for the Government, then there would be no reason for incorporating article 10 in said treaty, but such claims could be as effectually prosecuted under the act of 1834. It is evidently the intention of article 10 of said treaty that all equitable and just claims for depredations committed by white persons, or Indians belonging to tribes different from the Pottawatomie Nation, upon "their stock, timber, or other property," prior to the date of said treaty, should be proper claims to be presented to the Department of the Interior and Congress for its action thereon, and under such treaty Congress was to finally take such action on said claims as should be just in the premises. Claims which have accrued since the date of said treaty are not included therein.

While the right to render judgment on such of the claims as are shown to be just is rested by the claimants on treaties alone, we think there is a clear indication of liability on the part of the United States from the phraseology of the acts referring the claims for adjudication. These mean that judgment must be rendered if the claims are found by the proof to be equitably due. To say there is no legal right of recovery would be to contradict the terms of the statute.

Those certain claims sued for in this case, which originated from the destruction or injury caused by fire to the property of said plaintiffs through carelessness or design on part of white men, it is earnestly contended, are not included in the class of claims provided for under the treaty of 1867, because they are not the result of crime, offense, or misdemeanor, as is provided in the act of 1834. This objection is
27 not well taken, because, as before stated, we do not think the character of the claims referred to under article 10 of treaty of 1867 are to be determined by the act of 1834; that act can not, by the court, be written into the treaty of 1867, and can form no bar to the recovery of claims provided for therein.

Item 4 of claim 22, E. R. Kennedy, for a colt killed by the Union Pacific Railway in 1867, is rejected, because to entitle the party to recovery on said claim, it is necessary to show that the Union Pacific Railway killed this colt through such carelessness on its part as would have rendered it liable for same. If said railway company was not guilty of such negligence as to render it liable for the injury or accident, then no depredation on its part within the purview of said treaty has been committed, nor would there be any civil liability on the part of the railway company to respond for such injury in a suit brought against it to recover for said loss. The railway company was not a trespasser upon its right of way through said reservation. The proof in support of this claim simply states that the colt was killed through the carelessness of the employees of said railway company. This statement is simply a conclusion, and is not sufficient to justify the further conclusion that the railway company was responsible for the accident or injury; consequently the proof is insufficient to justify a recovery against the United States for this item.

There are two other claims, one, item No. 2 of claim 39 (Nah-num-muk-skuk) and item 7 of claim 89 (Eli G. Nadeau), which were instances of cheating or swindling through false representations. The first was where someone sold claimant a Government horse with the Government brand on it, and subsequently demand was made for this horse and claimant had to surrender it. The other is where a white man claimed to be an employee of the Government and bought forage, claiming it was for the Government, and gave therefor a voucher, telling him to present same for payment and it would be honored. The voucher was presented to the disbursing officer of the Government, and claimant was told it was worthless and the man who gave it not in the employ of the Government service, and payment, of course, refused.

These items grow out of contracts entered into voluntarily by claimants, and while they were defrauded thereby they are not within the purview of article 10 of the treaty of 1867, and they can in no proper sense be considered depredations committed upon "their stock, timber, or other property," as contemplated under said article. These claims result from a voluntary surrender of property under contract on part of claimants. It is not to be presumed that the Government undertook to protect and indemnify these Indians against bad contracts that they may have made or against contracts by which, through the want of proper care on their part, designing parties were enabled to swindle and defraud them. To warrant such a construction, such intention on the part of the Government must be expressed in the terms of the treaty or clearly inferred from its context. Therefore said items are disallowed. Those parts of items No. 2 and No. 3 of claim No. 37 (Sah-gah), being $150 and $50, respectively, for expenses in recovering horses alleged to have been stolen, are also rejected, because not depredations.

The act of Congress of March 3, 1891, in referring these claims to this court for adjudication, provides "that all papers, reports, evidence, records, and proceedings relating in any way to said claims now on file or of record in the Department of the Interior, or other department, or on file or of record in the office of the Secretary of Senate, or the office of the Clerk of House of Representatives, shall be delivered to said court, and in considering the merits of the claims presented to the court all testimony and

reports of special agents or other officers and other papers now on file or of record in departments or Congress, shall be considered by the court, and such value awarded thereto as in its judgment is right and proper." The claims which have been allowed as sustained by proof and those which have been disallowed for want of sufficient proof are shown in the findings, the reason for the disallowances being specified. The claims in the aggregate which have been allowed amount to $29,329.10.

28 V.—*Judgment of the court.*

At a Court of Claims held at the city of Washington on the 21st day of March, A. D. 1898, judgment was ordered to be entered as follows:

It is therefore ordered, adjudged, and decreed that the claimants, respectively, their heirs or legal representatives, have and recover of the United States the said sums of money specified in the third finding of fact, and that the Secretary of the Interior pay to said claimants, respectively, out of any moneys which may hereafter be appropriated by Congress for that purpose the sums set forth in said third finding of fact, less any attorney's fee which may by Congress be provided to be paid to claimants' attorney of record; but in case it shall be found that any one or more of the claimants named in said third finding has died, then, and in that event, the Secretary shall ascertain and pay to the heirs or legal representatives of each of said claimants the sum that would have been paid to the claimants if living.

BY THE COURT.

29 VI.—*Application for and allowance of appeal.*

ANTHONY F. NAVARRE AND OTHERS
vs.
THE UNITED STATES. } No. 17350.

From the judgment rendered in the above-entitled cause on the 21st day of March, A. D. 1898, in favor of the claimants, the defendants, by their Attorney-General, on the 11th day of June, 1898, make application for and give notice of appeal to the Supreme Court of the United States.

LOUIS A. PRADT,
Assistant Attorney-General.

Filed June 11, 1898.

The defendants, by their assistant attorney, having made application in vacation for the allowance of this appeal, it is

Allowed this 8th day of August, 1898.

CHARLES C. NOTT,
Chief Justice of the Court of Claims.

30 In the Court of Claims.

ANTHONY F. NAVARRE AND OTHER MEMBERS OF the Pottawatomie tribe of Indians
vs.
THE UNITED STATES. } No. 17305.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the

above-entitled cause of the findings of fact by the court and the conclusions of law thereon, of the opinion of the court, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court at Washington this 2d day of September, 1898.

[SEAL.] JOHN RANDOLPH,
Assistant Clerk Court of Claims.

(Indorsement on cover:) Office Supreme Court of U. S. Received Sept. 9, 1898. Case No. 16978. Court of Claims. Term No. 393. The United States, appellant, vs. Anthony F. Navarre and eighty-nine other members of the Pottawatomie tribe of Indians. Filed September 9, 1898.

No. 393.

Brf. of Atty. Gen. C. Binney & Pradt

for Appt.

Office Supreme Court U. S.
FILED
JAN 7 1899
JAMES H. McKENNEY,
Clerk.

Filed Jan. 7, 1899.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
ANTHONY F. NAVARRE AND EIGHTY-nine other members of the Pottawatomie tribe of Indians. } No. 393.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

CHARLES C. BINNEY,
Special Attorney.

L. A. PRADT,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1898.

THE UNITED STATES, APPELLANT,
v.
ANTHONY F. NAVARRE AND EIGHTY-nine other members of the Pottawatomie tribe of Indians. } No. 393.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This case came before the Court of Claims under the act of March 3, 1891, § 1 (26 Stats., 1010). By the treaty of June 5 and 17, 1846, proclaimed July 23, 1846 (9 Stats., 853), the various bands of Pottawatomies were gathered into one nation, and they sold to the United States the lands previously held by them, buying with a part of the proceeds a reservation in what afterwards

became the State of Kansas. This treaty contains the following words: "The said tribe of Indians giving assurance hereby of fidelity and friendship to the Government and people of the United States, and the United States giving at the same time promise of all proper care and paternal protection." After the Pottawatomies had settled on their reservation in Kansas, various members of them had stock and other property stolen by Indians of other tribes and white men, and also occasionally had fences, crops, etc., burned in consequence of the negligence of white men, or perhaps by design. These losses occurred from time to time down to the making of the treaty of January 28, 1867 (15 Stats., 533). Article X of this treaty provides as follows:

> It is further agreed that upon the presentation to the Department of the Interior of the claims of said tribe for depredations committed by others upon their stock, timber, or other property, accompanied by evidence thereof, examination and report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises.

Under the above provision the appellees presented their claims to an agent of the Interior Department, who reported the claims, with the evidence presented, to the Secretary of the Interior, by whom they were transmitted to Congress, in consequence of which transmittal Congress ultimately passed the jurisdictional act above referred to. (Rec. 11, 12.)

The Court of Claims found that seventy-two of the ninety claimants had suffered from depredations committed by others than the Pottawatomie tribe of Indians,

which depredations were committed by other Indians (to the extent of $5,890), as well as by white men, and included losses by fire (to the extent of $3,971.80) due to the negligence or design of white men. (Rec., 12–15.) On March 21, 1898, the Court of Claims gave judgment for these seventy-two claimants in the aggregate sum of $29,329.10, whereupon the United States took this appeal. (Rec., 23.)

ASSIGNMENT OF ERROR.

The Court of Claims erred—

1. In holding that the care and protection promised by the United States to the Pottawatomies, in the first article of the treaty of June 5 and 17, 1846, involved a greater liability, as regards losses of personal property, than the United States had assumed by the act of June 30, 1834, § 16 (4 Stats., 731).

2. In holding that the claims of the Pottawatomie tribe for depredations, referred to in the tenth article of the treaty of February 28, 1867, were not limited to claims under the said act of June 30, 1834, § 16.

3. In holding that the claims of the Pottawatomies, referred to the court below by the jurisdictional act, were not limited to claims under the said act of June 30, 1834, § 16.

4. In entering judgment in favor of the appellees in the sum of $29,329.10 (said sum including allowances for property taken by Indians and for destruction of property due to the negligence of white men), instead of the sum of $19,467.30.

BRIEF OF ARGUMENT.

This appeal is not directed to the entire subject-matter covered by the judgment of the court below. It is conceded that allowances to the extent of $19,467.30 were properly made for property taken, injured, or destroyed by the criminal acts of white men, but it is submitted that the allowances of $5,890 for property taken by Indians, and of $3,971.80 for property destroyed in consequence of the negligence of white men, or where no criminal act was proved, were not warranted by the jurisdictional act.

The jurisdiction of the court below over the present case was conferred by a provision in the act of March 3, 1891, § 1 (26 Stats., 1010), reading as follows:

> That the claims of certain individual members of the Pottawatomie Nation of Indians, their heirs or legal representatives, for the depredations committed by others upon their stock, timber, or other property, reported to Congress under the tenth article of the treaty of August 7th, 1868, be, and the same are hereby, referred to the Court of Claims for adjudication. And said court shall, in determining said cause, ascertain the amounts due and to whom due by reason of actual damage sustained.
>
> And all papers, reports, evidence, records, and proceedings relating in any way to said claims now on file or of record in the Department of the Interior or any other Department, or on file or of record in the office of the Secretary of the Senate or the office of the Clerk of the House of Representatives, shall be delivered to said court, and in considering the merits of the claims presented to the court all testimony and reports of special agents or other

> officers and other papers now on file or of record in the Departments of Congress shall be considered by the court, and such value awarded thereto as in its judgment is right and proper.

Jurisdiction over the same matter had previously been awarded by the act of March 3, 1885, § 1 (23 Stats., 372), but without any authority to consider anything but strictly legal evidence, and on that account, presumably, that act was not made use of by the claimants, so it need not be considered. The jurisdictional act refers to claims reported to Congress under the Pottawatomie treaty of February 28, 1867, proclaimed August 7, 1868 (15 Stats., 533), the authority to present such claims to Congress having been conferred by the tenth article, reading as follows:

> It is further agreed that upon the presentation to the Department of the Interior of the claims of said tribe for depredations committed by others upon their stock, timber, or other property, accompanied by evidence thereof, examination and report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises.

The words "examination and report shall be made to Congress of the amount found to be equitably due" are rather elliptical, and a more complete expression would be "examination shall be made thereof and a report shall be made to Congress of the amount found to be equitably due," the intention of the treaty obviously being that the Secretary of the Interior should pass upon all the claims, rejecting such as he considered inequitable and reporting only such as he considered equitable. The

Secretary did not follow this course precisely, but transmitted to Congress all the claims, with all the evidence submitted in support of them.

It was not intended, however, that the Secretary's action was to be final, as the object of his report was declared to be "in order that such action may be taken [by Congress] as shall be just in the premises." Although these claims were reported to Congress on December 20, 1871, Congress never finally did anything with them until March 3, 1885, when it gave the Court of Claims jurisdiction to adjudicate upon them, subsequently permitting it, by the act of March 3, 1891, to consider all the testimony, reports, and other papers in the case, although such testimony and documents were not of themselves legal evidence. Both the long inaction and the final action of Congress show its belief that the Secretary of the Interior had not made such complete examination of the claims as was desirable, and its conviction that only upon a thorough examination by a court of justice could a proper adjudication be made. The claims were therefore before the court below to determine the law and the facts and to enter judgment accordingly, without reference to any apparent conclusions of the Secretary of the Interior for or against any of the claims.

AS TO THE FIRST ASSIGNMENT OF ERROR.

These claims are the claims of the Pottawatomie tribe against the United States, within the contemplation of the treaty of February 28, 1867, "for damages committed by others upon their stock, timber, and other

property." In considering these claims, the first question that arises is why the Pottawatomies should have any claims at all against the United States Government for damages not committed by the officers of the Government. Undoubtedly the treaty of 1867 recognizes the existence of such claims, and their existence presupposes an assumption by the Government of liability for the acts of others than its own officers, for a claim against a person or a government must be founded upon some act or agreement of such person or government, and unless the Government had agreed to assume such a liability it could not have existed. When and to what extent was this liability assumed?

By the treaty of June 5 and 17, 1846 (9 Stats., 853), the Pottawatomies, who had previously lived as scattered bands on a number of separate reservations, were gathered into one nation and removed to a single reservation in Kansas. This reservation was in the Indian country, which was defined by the act of June 30, 1834, § 1 (4 Stats., 729), as being—

> all that part of the United States west of the Mississippi and not within the States of Missouri and Louisiana or the Territory of Arkansas, and, also, that part of the United States east of the Mississippi River and not within any State to which the Indian title has not been extinguished.

As a friendly tribe, resident in that country, the Pottawatomies were entitled to all the benefits of this act, including those of section 16, reading as follows:

> That where, in the commission by a white person of any crime, offense, or misdemeanor, within the

> Indian country, the property of any friendly Indian is taken, injured, or destroyed, and a conviction is had for such crime, offense, or misdemeanor, the person so convicted shall be sentenced to pay to such friendly Indian to whom the property may belong, or whose person may be injured, a sum equal to twice the just value of the property taken, injured, or destroyed. And if such offender shall be unable to pay a sum at least equal to the just value or amount, whatever such payment shall fall short of the same shall be paid out of the Treasury of the United States: *Provided*, That no such Indian shall be entitled to any payment out of the Treasury of the United States for any such property if he, or any of the nation to which he belongs, shall have sought private revenge or attempted to obtain satisfaction by any force or violence: *And provided also*, That if such offender can not be apprehended and brought to trial, the amount of such property shall be paid out of the Treasury, as aforesaid. (Act of June 30, 1834, § 16, 4 Stats., 731.)

The above section has been reenacted in the Revised Statutes (§§ 2154, 2155), but as the present claims accrued before such reenactment, the original section may properly be referred to. It is submitted that it defines the liability which the United States assumed for losses due to depredations committed upon the property of all friendly Indians within the Indian country, including the Pottawatomies, and that the "claims" referred to in the treaty of 1867 were intended to be confined to claims arising under this act, for by this act alone did the Government agree to be liable for the actions of others than its own officers. About two-thirds of the amount of

the present judgment are for claims of this character, but the balance does not come within the section, and it remains to be seen whether the court below was justified in extending the liability of the United States beyond what the section authorized.

It was contended in the court below that the liability of the Government in this case grew out of the act of May 18, 1830 (4 Stats., 411), providing for an exchange of lands with Indian tribes, and their removal to the west of the Mississippi, and for their protection in the possession of their new homes; and the references to this act in the opinion of the court below (Rec. 19, 20) seem to indicate its approval of the contention. An absolute answer to the contention, however, is found in the fact that the act of May 28, 1830, relates exclusively to exchanges of land made between the President of the United States and any tribe or nation of Indians, and the second section of this act, which authorized the President to make such exchanges, was repealed by the act of March 3, 1839, § 2 (5 Stat., 328), so that thereafter the statute could have no bearing except in regard to Indians living upon lands received by exchanges made with the President under its second section prior to its repeal. This is clear from the language of section 2114 of the Revised Statutes reenacting the provisions of sections 6 and 7 of the act of 1830, but applying them exclusively to the case of tribes or nations removed upon an exchange of territory under that act.

The words are:

> SEC. 2114. The President is authorized to exercise general superintendence and care over any tribe

> or nation *which was removed upon an exchange of territory under authority of the act of May twenty-eighth, eighteen hundred and thirty*, "to provide for an exchange of lands with the Indians residing in any of the States or Territories, and for their removal west of the Mississippi," and to cause *such tribe or nation* to be protected, *at their new residence*, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.

Had the revision been made before the treaty of 1867 it could not be contended for a moment that this section applied to the Pottawatomies, but in point of fact, as has just been shown, the law as to this was precisely the same before the revision.

The Pottawatomie nation did not obtain its reservation in Kansas by exchange under the act of 1830, but by the treaty of June 5 and 17, 1846, as already stated, so that the provisions of the act of 1830 can not possibly have applied to them. This act may therefore be wholly left out of consideration in the present case, and while the statement of the court below—that this act "indicates the policy of the United States * * * the general policy of the Government toward other Indians who might be removed beyond the Mississippi River, and thereby become subject to depredations of other hostile Indians or lawless white men" (Rec., 20)—may be true as regards those particular tribes who were removed to a "new residence" under that act, the general policy of the United States must be gathered from other statutes.

It is true that before the treaty of 1846 was made the Pottawatomies had been removed from the east to the west of the Mississippi, in accordance with the act of 1830, under the treaty of September 10, 1833 (7 Stats., 431), and various other subsequent treaties made with separate bands; but this fact does not warrant the contention of appellees' counsel that the rights which the Pottawatomies had acquired under the act of 1830, by virtue of that removal, remained to them after their subsequent removal to another residence, under a new treaty with which the act of 1830 had nothing to do.

The language of section 5 of the act of 1830 is explicit, "cause such tribe or nation to be protected, *at their new residence*, against," etc. The protection promised by this section was clearly intended to be local, and dependent upon the Indians being in a residence acquired under the act of 1830; and if that residence was subsequently given up, and another one acquired by a treaty not made under that act, this protection could no longer be invoked. Even if this could possibly be held to be otherwise, the words "interruption or disturbance," used in the act of 1830, can properly refer only to attempts to dispossess the Indians of the lands granted to them, and the promise of protection was a sort of covenant for quiet enjoyment. There is nothing whatever in these words to imply an assumption of any liability in regard to personal property, a liability which was ultimately assumed by the act of 1834.

While the court below held that the word "claims," as used in the treaty of 1867, was not limited to claims

under the act of 1834, it certainly did not deny that the Pottawatomies had claims under that act when the treaty of 1867 was made, nor did it deny that the Pottawatomie Reservation was within the "Indian country," as defined in section 1 of the act of 1834, and to which country the act applied. On the contrary, the court below says expressly (Rec., 20):

> This reservation was *beyond the protection of the civil laws* of the Government, and on that reservation they were more liable to be subject to depredations, not only from white people, but from *other uncivilized tribes of Indians.*

This language certainly indicates that the court below considered the Pottawatomie Reservation as within the Indian country, and the Pottawatomies themselves as entitled to *at least* the protection of the act of 1834, whatever other rights they might also have in addition. Appellees' counsel, however, now raise for the first time the objection that the act of 1834 never applied to the Pottawatomies and their reservation at all, because, they say, that reservation was not "Indian country" within the meaning of the act of 1834, the original Indian title thereto (that of the Kansas Indians) having been extinguished by the Kansas treaty of January 14, 1846 (9 Stats., 842). It is submitted that this strained and narrow construction of the act of 1834 can not stand.

It is true that in *Bates* v. *Clark* (95 U. S., 204) this court said:

> All the country described by the act of 1834 as Indian country remains Indian country so long as the Indians retain their original title to the soil,

and ceases to be Indian country whenever they lose that title, in the absence of any different provision by treaty or by act of Congress.

In *Bates* v. *Clark* a seizure of whisky and other goods had been made in Dakota Territory on land which had been relinquished to the United States by the Sioux Indians by the treaty of April 29, 1868, Article II (15 Stats., 635, 636), and had not been appropriated to Indian settlement by the United States after its acquisition, but had apparently become public land. It was, therefore, held, both by the supreme court of Dakota Territory and by this court, that the land in question had ceased to be Indian country within the meaning of the act of 1834. The only question then before this court was whether land to which the Indian title had been relinquished and which was not occupied by Indians, but by white men, under the public-land laws of the United States, continued to be Indian country; and if the statement above quoted from the opinion in *Bates* v. *Clark* was intended to refer to any other state of circumstances than that found in that case, it was clearly *obiter*.

It is submitted, however, that that opinion can not possibly have been intended to convey the meaning that where the United States obtained land in the Indian country from a tribe of Indians, and did not dispose of it as public land, but gave it to another tribe of Indians for Indian settlement, such land ceased to be Indian country within the meaning of the act of 1834. Such an interpretation of the act of 1834 would be manifestly unreasonable, unjust, and in conflict with the whole purpose and spirit of that act. The purpose of the act, as

shown by its title, was "to regulate trade and intercourse with the Indian tribes and to preserve peace on the frontiers." This shows that the act was intended to operate upon all Indian tribes within the United States, except, as the first section shows, those residing within any State. There is absolutely nothing in the act to indicate that it was intended to operate only upon Indians living on lands which they held by original title, and not upon Indians living on lands granted them by the United States, who had previously acquired the same from some other tribe of Indians. Manifestly, both classes of Indians had precisely the same rights, and were entitled to precisely the same treatment at the hands of the United States. To make any distinction between them would have been most unjust, and no such distinction whatever is suggested in the act.

> The tribes for whom the act of 1834 was made were those semi-independent tribes whom our Government has always recognized as exempt from our laws, whether within or without the limits of an organized State or Territory, and, in regard to their domestic government, left to their own rules and traditions; in whom we have recognized the capacity to make treaties, and with whom the governments, State and national, deal, with a few exceptions only, in their national and tribal character, and not as individuals. (*United States* v. *Joseph*, 94 U. S., 614.)

This language is manifestly applicable to the Pottawatomies, and it contains no suggestion that the act of 1834 was intended to apply only to Indians who had an original title to their lands, to the exclusion of those who had taken title from the United States.

If the policy of inducing Indians to migrate westward, and to grant to those from the east land previously acquired from western Indians, had not been adopted until after the act of 1834, the contention that this act did not apply to such Indians might possibly have more to support it; but that policy was in full force at that time, and hence the act of 1834 must be understood as having been enacted with the knowledge that very many Indian tribes were already, and others would be in the future, inhabitants of lands acquired from the United States, and to which the original Indian title had previously been extinguished. Hence the words in section 1 of the act of 1834, "to which the Indian title has not been extinguished," can not refer exclusively to the *original* Indian title, but must refer to any Indian title, whether original or acquired from the United States.

These words must properly be understood as equivalent to "rightfully occupied by any tribe or band of Indians;" and, so understood, the words must obviously have applied to the Pottawatomie Reservation as soon as it was granted to the Pottawatomie Nation by the treaty of June 5 and 17, 1846. In point of fact, as the land granted to the Pottawatomies had been obtained from the Kansas Indians by a treaty which had only been proclaimed on April 15, 1846 (9 Stats., 842), less than two months before the Pottawatomie treaty was made, it is almost certain that this land had been obtained from the Kansas Indians with the intention that a portion of it should continue to be devoted to the purpose of Indian settlement; but whether the grant to the Pottawatomies was in contemplation when the land was obtained from

the Kansas Indians, or was an afterthought, it is clear that the rights of the Kansas Indians and the Pottawatomies were the same, and that the duties of the United States toward them in respect of those rights did not differ. It would be most unreasonable to hold that because the lands remained for a very short time in the possession of the United States, their ultimate Indian owners did not have the same rights of protection under the act of 1834 that the original Indian owners of the land had had.

It should not be overlooked that although the opinion in *Bates* v. *Clark* uses the words "original title," the title which had been extinguished having been in that case an original one, these words are qualified by the further statement, "in the absence of any different provision by treaty or act of Congress." This statement may properly be understood as meaning that if, after the extinguishment of an original Indian title, the land was again inhabited by Indians, under any treaty or act of Congress, it would be "Indian country" within the intent of the act of 1834.

It is true that in *American Fur Company* v. *The United States* (2 Peters, 358) it was held that the act of March 30, 1802 (2 Stats., 139), did not apply to "territory purchased by the United States of the Indians, but frequented and inhabited exclusively by Indian tribes." The language of the act of 1802, in defining what should constitute Indian country, was very different from that of the act of 1834. The act of 1802 established certain boundaries, and provided that when those boundaries were changed the act should thereafter apply only within

the new boundary. The policy of granting to eastern Indians lands previously acquired from Indians in the west was not in contemplation when the act of 1802 was made, the Louisiana cession not having yet been made, and the change of boundaries contemplated in that act was a change in consequence of the acquisition of Indian lands by the United States and their ceasing to be occupied by Indians.

The act of 1802 not being in harmony with the subsequently adopted policy of removing Indian tribes from the east to the west, the necessity of an act which should apply to the country occupied by Indians, whether under an original or an acquired title, became obvious, and hence this act was repealed and the act of 1834, with its broader provisions, was adopted in its place. The case of *American Fur Company* v. *The United States* can, therefore, have no bearing upon a case arising under the act of 1834.

The case of *Ex parte Crow Dog* (109 U. S., 556) is also cited by appellees' counsel in support of the contention that the Pottawatomie Reservation was not in the Indian country, but that case has obviously no bearing here, the question there involved being in regard to the jurisdiction of the territorial court within the Sioux Reservation (which was indisputably "Indian country") under the terms of the Sioux treaty.

The reason of the court below, however, for disregarding the act of June 30, 1834, was, as already stated, not that that act did not apply to the Pottawatomie Reserva-

tion, but that the treaty of 1846 itself contained a broader promise of protection against depredations than is found in the act. The opinion says:

> The first article of the treaty of 1846 contains this stipulation: "It is solemnly agreed that the peace and friendship which so happily exists between the people of the United States and the Pottawatomie tribe of Indians shall continue forever, the said tribe of Indians giving assurance hereby of fidelity and friendship to the Government and people of the United States, and the United States giving at the same time *promise of all proper care and parental protection.*" Under this treaty the promise of care and protection given to these Indians is general in its terms and is restricted as against no particular parties; and under this treaty these Indians were removed by the United States to their reservation in the Territory of Kansas, where the depredations complained of in this suit were committed. This reservation was beyond the protection of the civil laws of the Government, and on that reservation they were more liable to be subject to depredations, not only from white people, but from other uncivilized tribes of Indians; therefore, this promise of care and protection was extended to them by the United States. (Rec., 20.)

It is submitted that there is not merely nothing to warrant this conclusion of the court below, but that it is even in direct conflict with the doctrine laid down by this court in *United States* v. *Perryman* (100 U. S., 235). The phrase "all proper care and parental protection" is not peculiar to the Pottawatomie treaty of 1846, but is obviously equivalent to the phrase "parental care and

protection" found in the Creek treaty of February 14, 1833 (7 Stats., 417), in the following article:

> ART. I. The Muskogee or Creek Nation of Indians, west of the Mississippi, declare themselves to be the friends and allies of the United States, *under whose parental care and protection they desire to continue*, and that they are anxious to live in peace and friendship, not only with their near neighbors and brothers, the Cherokees, but with all the surrounding tribes of Indians.

The above article is an express declaration on the part of the United States that the Creek Nation was then, and was to remain, under the "parental care and protection" of the United States, and this declaration being substantially equivalent to that in regard to the Pottawatomie Nation in the first article of the treaty of 1846, the liability intended to be imposed by these declarations must have been the same in both cases. According to the court below, this liability, as far as depredations were concerned, should not have been limited to that fixed by the act of 1834, either in the case of the Pottawatomies or in that of the Creeks, and yet in *United States* v. *Perryman* (100 U. S., 235) this court held that the liability of the United States for depredations committed upon the property of members of the Creek Nation was limited by the act of 1834, as reenacted in sections 2154 and 2155 of the Revised Statutes; and, further, that that act was to be strictly construed, so that the expression "white person" did not cover the case of a colored person, although a citizen of the United States. It is evident that the court would

have made precisely the same decision had the suit been by a Pottawatomie Indian, and hence that the court below erred in holding that the treaty of 1846 extended the liability of the United States for depredations beyond that imposed by the act of 1834.

Even apart from the effect of the *Perryman Case*, the conclusion of the court below could not be sustained. The words "all proper care and parental protection" do not necessarily include a promise of pecuniary liability for depredations committed by lawless men, whether whites or Indians; but even if such a promise could be understood from those words, it is only reasonable to suppose that what was meant was a liability within the limits of the act of 1834. By that statute the United States first undertook to make itself liable for depredations committed upon friendly Indians in the Indian country, and it fixed certain reasonable limits to that liability. These limits were that the depredations should have been committed by white men, in the commission of a crime, when full compensation could not be had from the offender, and when the Indian sufferer or his tribe had abstained from revenge and acts of violence. These were regarded by the Government of the United States as reasonable and proper limits, and defined the measure of the liability which it saw fit to assume toward all the friendly tribes living in the Indian country, whether indigenous there or brought there from the East, and there was nothing in the condition of the Pottawatomies to call for a greater liability to them than to the other tribes.

It can not be denied that in voluntarily assuming a liability within the limits of the act of 1834 the United

States acted liberally and generously, as well as reasonably. The United States does not undertake to recompense its own citizens for losses suffered by trespass, robbery, or arson, and it was under no obligation to recompense the Indians. In order, however, to prevent strife and bloodshed between red men and white, it did promise compensation for losses inflicted by white men, provided the Indians abstained from retaliation or violence. Moreover, it did undoubtedly, through its agents, and by the use of force when necessary, attempt to keep the various tribes within their several reservations, or the regions where they were understood to belong, and to preserve peace among them. This was, however, a task of great difficulty, in which absolute success was impossible, and accordingly the United States, recognizing the impossibility of wholly preventing these nomadic or seminomadic savages from preying upon others of their race, never undertook to assume a pecuniary liability for their depredations, as it did in the case of white men. How can it be said that, in refusing to assume such an unlimited liability, the United States acted other than reasonably and equitably?

AS TO THE SECOND ASSIGNMENT OF ERROR.

The court below held that the Pottawatomie treaty of 1867, under which the claims in the present case were presented to the Secretary of the Interior, did not contemplate restricting the Pottawatomies to claims under the act of 1834, both because the treaty contains nothing which it understands as words of limitation, and because "such claims could be as effectually prosecuted

under the act of 1834," without the remedy afforded by the treaty. It is submitted that neither of the reasons can be sustained. The treaty of 1867 uses the words "claims of said tribe," thus recognizing the claims as already existing, and as being claims against the Government of the United States. The treaty contains no new assumption of liability, but a clear recognition of an existing liability, for where there is no liability there can be no claim. Now the court below has found as a fact that nearly two-thirds, in value, of the losses which have been proved in this case, were due to depredations committed by white men, not the result of mere negligence, or in other words that they were losses which gave rise to claims under the act of 1834. It is therefore indisputable that as to these losses the treaty assumed no new liability but merely recognized an existing liability, and if as to these losses the words, "the claims of said tribe for depredations committed by others upon their stock, timber, or other property," meant, as they certainly did, existing claims under the act of 1834, what is there in the words quoted to show an intention to make the Government liable for other losses, for which no claim on the Government had previously existed?

Moreover, the view which the court below took of the treaty of 1867 was manifestly based upon its erroneous view of the act of 1830 and the treaty of 1846. The opinion says:

> This act [of 1830] and the subsequent treaty of 1846 clearly indicates the policy of the United States toward these Indians—the protection of the

> strong arm of the Government being promised them as against all persons or tribes of Indians. This being the undertaking on the part of the Government by its treaty with these Indians in 1846, and the general policy of the Government toward other Indians who might be removed beyond the Mississippi River, and thereby become subject to depredations of other hostile Indians or lawless white men, as indicated by the act of 1830, when the treaty of 1867 was made with this tribe of Indians, if the Government intended to withdraw or restrict the protection previously promised to these Indians, it would have indicated such purpose by incorporating into the terms of the treaty such restrictions, or withdrawal of protection. (Rec., 20.)

The meaning of the above statement obviously is that as the act of 1830 and the treaty of 1846 had extended the liability of the United States to the Pottawatomies, in regard to depredations, beyond the scope of the act of 1834, the treaty of 1867 must be understood as recognizing that extended liability; but, as already shown, the act of 1830 only applied to those tribes who received lands under it, and not to the Pottawatomies, while the treaty of 1846 could not, under the doctrine of the *Perryman* case, have extended the liability of the United States, as to depredations, beyond the scope of the act of 1834. The court below was undoubtedly right on one point, viz, that the treaty of 1867 did not alter the liability of the United States as to depredations, but left it precisely as it was before, and if, previous to that treaty, the liability was limited by the terms of the act of 1834, it remained so limited even under the treaty.

The argument that the tenth article of the treaty of 1867 was useless, unless it applied to other claims than those under the act of 1834, is equally without foundation. As already stated, nearly two-thirds of the losses which have been proved are certainly the subject of claims under the act of 1834. It is true that as the *Perryman Case* was a suit in the Court of Claims by an Indian, under sections 2154 and 2155 of the Revised Statutes, the present appellees could probably also have sued in the same court under the act of 1834. The court had existed, however, for ten years before the treaty of 1867 was made, and during the last four years of that period it had had authority to render judgment, yet the Pottawatomies had not availed themselves of its jurisdiction, and by 1867 a large part of these claims had become barred by the statute of limitations. Very possibly it had not occurred to anyone in 1867 that the Court of Claims was open to Indians for the enforcement of claims under the act of 1834; but apart from this it is clear that at that time the necessity of employing counsel to appear in Washington, and of taking testimony according to the strict rules of evidence, all parties in interest being then debarred from testifying, would have rendered it a great hardship to have required the Pottawatomies to sue in that court, even if the statute of limitations had not barred the greater portion of their claims. What was needed, or what appeared to be needed at that time, to effect the purposes of justice under the act of 1834, was not a large number of small suits by individual Indians in the Court of Claims, but an investigation by an agent of the Department of the

Interior on the spot, and this remedy was granted by the treaty of 1867. That it has not given the prompt relief that was anticipated was partly due to the error of the agent in disregarding the act of 1834, and partly to the inaction of Congress. The scheme was a good one, only it was not properly carried out.

The court below seems to have wholly misunderstood the words "depredations committed by others" in the treaty of 1867, assuming that the term "others," as used, "evidently embraces all persons other than members of the Pottawatomie tribe of Indians." (Rec., 19.) It may reasonably be asked, If the word "others" be so understood, what claim in law or equity, under statute or treaty, could the Pottawatomies possibly have had which that word excludes? What claim could they have had upon the United States for depredations committed by the Pottawatomies themselves upon each other? They were an Indian nation, governed by their own chiefs in accordance with their own traditional and recognized, if unwritten, laws. If they were robbed by each other, they had the power to punish the offenders, and the United States had absolutely no responsibility in the matter. If the word "others" means nothing more than "others than Pottawatomies," it has no effect whatever and had better have been omitted. It is, however, a cardinal rule of the construction of statutes and treaties that effect must be given to every word, wherever possible, and even without this rule the word "others" has a very clear and definite meaning. It means, taking it grammatically, "others than the parties to this treaty," and taking it practically, it means others than the only party to the

treaty, who, had it committed depredations upon the Pottawatomies, could have been justly liable to them. It means "*others than the United States.*" Now, the scope of the liability of the United States for depredations committed by others than the United States was already defined by the act of 1834, under which alone, as already stated, could "claims" on the part of the Pottawatomies have arisen; and the whole phrase, "The claims of said tribe for depredations committed by others upon their stock, timber, or other property," not only may, but, it is submitted, must properly be understood as equivalent to "claims arising under section 16 of the act of June 30, 1834, for depredations upon their stock, timber, or other property."

Another word in the treaty of 1867 which proved a stumbling-block in the path of the court below was the word "equitably," in the following clause:

> * * * Report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises.

The court below understands this clause to mean that—

> all equitable and just claims for depredations committed by white persons, or Indians belonging to tribes different from the Pottawatomie Nation, upon "their stock, timber, or other property," prior to the date of said treaty, should be proper claims to be presented to the Department of the Interior and Congress for its action thereon, and under such treaty Congress was to finally take such action on said claims as should be just in the premises. (Rec., 21.)

In other words, the idea of the court below is, to quote its own language in regard to the effect of the jurisdictional act (Rec., 21), that "to say that there is no legal right of recovery," under the act of 1834, "would be to contradict the terms" of the treaty.

The word "equitable," when used in a general sense, as "equitably" is used here, has two meanings. Understood with reference to natural justice and right, it means—

> Just, fair, and right, in consideration of the facts and circumstances of the individual case. (*Black's Law Dict.*)

Understood with reference to proceedings in courts of equitable jurisdiction, it means—

> Existing in equity; available or sustainable only in equity, or only upon the rules and principles of equity. (Ibid.)

Now, the treaty of 1867 was not concerned with remedies available in courts of equity, or based upon the rules and principles of equity jurisdiction. No Indian could sue the United States in a court of equity on account of "depredations committed by others," either under the act of 1834 or any other act. The treaty provided a remedy by executive and Congressional action, and hence the word "equitably" must mean "justly, fairly, and rightly, in consideration of the facts and circumstances of the particular case." This does not mean that the liability of the United States was to be extended beyond the limits within which it had agreed, by the act of 1834, to be liable, but that its liability, existing by that statute alone, was to be ascertained "justly, fairly,

and rightly," without regard to the technical rules of pleading or evidence as then established by law, but with due consideration of the facts and circumstances of each particular case and free from the bar of the statute of limitations. The treaty did not provide that the claims were to be equitable in the sense of not being warranted by statute, but that they were to be "found to be equitably due," i. e., ascertained in an equitable way, on the principles of justice and fairness.

AS TO THE THIRD ASSIGNMENT OF ERROR.

The court below further says:

> While the right to render judgment on such of the claims as are shown to be just is rested by the claimants on treaties alone, we think there is a clear indication of liability on the part of the United States from the phraseology of the acts referring the claims for adjudication. These mean that that judgment must be rendered if the claims are found by the proof to be equitably due. To say there is no legal right of recovery would be to contradict the terms of the statute. (Rec., 21.)

The jurisdictional act of March 3, 1891, did undoubtedly authorize the appellees to present their claims without regard to the rules of evidence as established by law, and in that way it materially furthered their recovery of whatever might be justly due them, but it is submitted that while this act removed all barriers to the ascertainment of the actual liability of the United States, it in no way extended the scope of that liability beyond what it had been under the treaties of 1867 and 1846, and

the act of 1834. The acts of 1885 and 1891 authorize the court below to "ascertain the amounts due and to whom due by reason of actual damage sustained," but the court below has rightly held that the word "due" means due at the date of the treaty of 1867, and has rejected all claims for subsequent losses. (Rec., 15, 16.) All the claims that were "due" at the date of the treaty of 1867 were due under the act of 1834, and there is nothing in the jurisdictional act to indicate any intention to recognize any others.

It is therefore submitted that the judgment of the court below should be reversed, and that that court should be ordered to enter a new judgment for all claims found due under section 16 of the act of June 30, 1834.

CHARLES C. BINNEY,
Special Attorney.

L. A. PRADT,
Assistant Attorney-General.

No. 393
Filed Jan. 7, 1899.

IN THE

Supreme Court of the United States.

THE UNITED STATES, Appellant,
vs.
ANTHONY F. NAVARRE and eighty-nine other members of the Pottawatamie tribe of Indians, Appellees. } No. 393.

Appeal from the Court of Claims.

J. H. McGOWAN, Attorney for Appellees.
JOHN WHARTON CLARK, of Counsel.

IN THE

Supreme Court of the United States.

THE UNITED STATES, Appellant *vs.* ANTHONY F. NAVARRE and eighty-nine other members of the Pottawattamie tribe of Indians, Appellees.	*No. 393.*

Appeal from the Court of Claims.

BRIEF FOR APPELLEES.

The findings of fact of the Court of Claims are set forth on pages 11 and 12 of the Record, and a concise statement of the case on pages 17 and 18 of the Record. Appellees might safely rest this case upon the able and exhaustive argument made by Judge Howry in the opinion of the court in this case. The remarks of counsel for appellees, therefore, will be confined to a few suggestions in the line of the Court's opinion, and a brief review of the errors raised by counsel for appellant.

Brief of Argument.

There is no common ground on which the appellant and appellees meet in this case. Each bases the liability, protection, and policy of the Government in respect of these claimants on entirely different acts of Congress. On the one hand, appellant relies upon a part of the Sixteenth Section of the Act of June 30, 1834, to determine the protection and policy of the

United States and fix its liability. (Sec. 16, 4 Stats., 731.) On the other hand, the appellees rely, as the bases of their action, upon Article X of the Treaty with the Pottawattamie tribe of Indians, proclaimed August 7, 1868 (15 Stats., 533); the Act of March 3, 1891, which gave jurisdiction to the Court of Claims in this case and also executed the said Tenth Article of said Treaty, provided it should be deemed not to be self-executing (26 Stats., Sec. 1, p. 1010); and the Act of May 28, 1830, which gave authority to the tribes of Indians living east to exchange their lands and remove west of the Mississippi River, and also promised protection from "all disturbances and interruptions from *other* Indians and *other* persons" to such tribes as would thus consent (4 Stats., 411). Article I of the Treaty of June 5th and 17th, 1846, also promised "all proper care and parental protection" to the Pottawattamie tribe of Indians, in contemplation of, and harmony with, said Act of May 28, 1830. (9 Stats., 833.)

History of the Removal of the Pottawattamie Indians West of the Mississippi.

The history of the Pottawattamie tribe of Indians, both as to its original locality and its universally peaceful condition, is well known to this Court. The Pottawattamies originally inhabited a large portion of the present States of Michigan, Indiana, and Illinois. The settlement of these territories was so rapid in the later part of the twenties, that it became necessary for the United States to extinguish the Indian title to the lands therein; and for the purpose of making it possible that an exchange of lands might be made with these semi-civilized tribes for other lands west of the Mississippi River, the Act of May 28, 1830, was passed by Congress. Under the authority of this Act the Pottawattamie tribe of Indians, as provided in the Treaty of Chicago, proclaimed February 21, 1835, were removed to the Missouri River, the lands of the greater portion

of the tribe being located within the present State of Iowa, and adjoining what was known as the "Indian country" at that time. (Act of June 30, 1834, 4 Stats., Sec. 1, p. 731.) These fertile plains and valleys rapidly filled up by white emigrants, and again the Pottawattamie tribe of Indians were induced to give up their valuable reservation and their homes, and the Treaty of June 5th and 17th, 1846, was entered into whereby they relinquished all the lands conveyed to them by the Treaty of Chicago, and accepted a reservation on the Kansas River as a permanent home (Revision of Indian Treaties, 164; Id 181). These claimants (appellees) resided on this reservation on the Kansas River as members of the Pottawattamie tribe when these depredations were committed, and when the Treaty of February 27, 1867—the Tenth Article of which is relied upon in this case—was entered into.

The Policy Pursued and the Protection Afforded by the United States to those Indian Tribes Exchanging their Lands East and Moving West to the Mississippi River.

It will be admitted that the policy pursued, and the protection afforded to those tribes of Indians that were authorized, under the Act of May 28, 1830, to exchange their lands east of the Mississippi River for lands west, were more liberal and ample than toward the wild Indians of the "Indian country." Neither will it be disputed that the Pottawattamie tribe of Indians was removed under the provisions of the Treaty of Chicago, proclaimed February 21, 1835, possessing the full authority and protection of said Act of May 28, 1830. Neither will it be denied that they were removed to lands west of the Mississippi River, to which the Indian title had been extinguished, touching on the "Indian country," they having been located upon the Missouri River, the principal part of their reser-

vation being in the present State of Iowa, then a part of Michigan Territory. It will also be admitted that the protection of the Act of May 27, 1830, remained with the Pottawattamie Indians, from the time of their location upon their reservation west of the Mississippi, until it was ceded by them to the United States by their Treaty of June 5th and 17th, 1846.

It was this Act of May 28, 1830, that was especially designed to give authority to the President to remove to the westward, without the confines of any State or organized Territory, the semi-civilized tribes of the east, and to afford them protection in that inhospitable country. The reason for this unusual protection is very plain, when we keep in mind the fact that these friendly semi-civilized tribes were removed to lands contiguous to the "Indian country," where the wild and warlike tribes inhabited. The lands for which they exchanged their lands east were those the Indian title to which had originally belonged to some of their warlike brethren. Yet these often frequented the lands which they had given up to the United States for the purpose of pillage. These wild tribes of the west were not friendly, generally, to the semi-civilized tribes from the east, because they had forsaken their ancient customs and were walking in the path of the white man. Moreover, as the country surrounding these lands, for which these Indians exchanged their lands in the east, was practically uninhabited by white settlers, they were afforded no protection of law. Under these conditions the Sixth and Seventh Sections of this humane Act of May 28, 1830, were necessary to the proper protection of these friendly semi-civilized Indians. Section 6, is as follows:

And be it further enacted that it shall and may be lawful for the President to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any *other* tribe or nation of Indians, or from any *other* person or persons whatsoever.

Nay more, we urge that it was one of the inducements which led these Indians to leave their homes east of the Mississippi, that they were to be protected from "all disturbances and interruptions" from lawless white men and wild Indian tribes. They could never have been induced to give up their lands for settlement, if they had not been promised this extraordinary protection; and these Pottawattamie Indians understood that this same protection was to follow them to their reservation on the Kansas River. Not only that, but the United States recognized that it should follow them there, and in the First Article of the Treaty of June 5th and 17th, 1846, gave the "*promise* of proper care and parental protection" to these Indians who removed to the Kansas reservation, under said Treaty. The promise of protection from "all interruptions and disturbances" did not only run with the land, but also with the person and personality of the Pottawattamie tribe of Indians, who removed to the reservation on the Kansas River, at the instance of, and under an agreement with the United States. Justice toward these Indians would not permit the United States to say, that because it had induced them to leave their fertile reservation in the State of Iowa, greatly to the advantage of itself, that it had on that account, and because of that removal, relieved itself from the obligation to protect them as it had promised when it had induced them to remove from the east to the west of the Mississippi. That would be very closely akin to permitting a wrong doer to take advantage of his wrongful act.

When the Treaty of February 27, 1867, was entered into the Pottawattamie Indians understood that they had been entitled to this protection afforded by Section VI of the Act of May 28, 1830, and doubtless insisted upon the benefits of its provisions. Hence, the Tenth Article was incorporated into said Treaty. It is as follows:

It is further agreed that, upon the presentation to the Department of the Interior of the claims of said tribe for depre-

dations committed by *others* upon their stock, timber, or other property, accompanied by evidence thereof, examination and report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises.

It must be presumed that the framers of this article of the Treaty of February 27, 1867, were conversant with the laws applicable to the Pottawattamie Indians, and Indians in general. The Acts of May 28, 1830, and June 30, 1834, must have been familiar to them, in order to enable them to intelligently and safely draft this Treaty, and had they intended to mold it in the form of the Act of June 30, 1834, the words "*white men*," and not the word "*others*," would have been used in the Tenth Article of this Treaty. The word "*others*" is manifestly taken from Section VI of the Act of May 28, 1830, above set forth. The meaning of this word "*others*," used in this article of the Treaty, is manifest and needs no comment. Its common and usual meaning would make it apply to any person or persons, without respect of color, and to any tribe or nation of Indians, except the Pottawattamie tribe, or members thereof.

Appellant admits that appellees are entitled to a judgment from this Court for $19,467.30, because it was for property taken, injured, and destroyed, by the criminal acts of white men under the Act of June 30, 1834. This admission is doubtless made for the purpose of bolstering up the fallacious argument advanced by appellant, that so much of the claim was a recovery under the said Sixteenth Section of the Act of June 30, 1834. Such a deduction would not logically follow from the premises given by appellant, even on the supposition that the Sixteenth Section of the Act of June 30, 1834, operated over the reservation occupied by the Pottawattamie Indians at the time these depredations ocurred. A proposition which we deny. For, in the first place, a law specially applicable to these Indians would supersede and supplant the general Act of June 30, 1834, and, moreover, the Tenth Article of the Treaty of February

27, 1867, if that were not the case, would supersede the Act of June 30, 1834, in so far as it is in conflict with the same, it being the law of the land, as well as said Act of Congress, and later in date.

Appellant quotes the case of the United States *vs.* Perryman (100 U. S., 235) as an authority in this case. In that case the claimant did not rely upon the provisions of a subsequent treaty, as appellees have here. It is believed that had a subsequent treaty, in conflict with the Sixteenth Section of the Act of June 30, 1834, been before the Court in the Perryman case for determination (as in the Treaty now under consideration) the decision would have been different. The language of the Court, in that case, infers as much. Besides the Act of May 28, 1830, seems not to have been invoked by the claimant in the Perryman case. And the theft in that case, having been committed in the Indian Territory, it might be doubtful whether the Act of May 28, 1830, would apply to it. But that is not our case.

The Tenth Article of the Treaty of February 27, 1867, Executed by the Act of March 3, 1891.

But aside from the Acts of May 28, 1830, and June 30, 1834, appellees maintain that the Tenth Article of the Treaty of February 27, 1867, if it is not self-executing, is executed by the Act of March 3, 1891, giving the Court of Claims jurisdiction and authority to determine this cause. U. S. *vs.* Percheman (7 Pet., 51); Whitney *vs.* Robertson (124 U. S., 194). If the former Acts were entirely wiped out, this Tenth Article of the Treaty, executed by this Act of March 3, 1891, would give appellees a right of recovery in this Court. The words on which we rely to carry this Treaty into complete effect, i. e., execute it, are as follows:

And said Court shall, in determining said cause, *ascertain* the amounts *due* and to whom due by reason of actual *damage* sustained.

These are not jurisdictional words. They are for the purpose of guiding the Court in its deliberation, and they are a full and complete guide to the Court in determining the actual amount of damages sustained, and to whom they are due.

The Pottawattamie Reservation on the Kansas River Not Indian Country.

But if all these arguments should fail, then we urge that a complete answer to appellant's entire argument is found in the fact that the Pottawattamie reservation on the Kansas River was not within the "Indian country" at the time these depredations were committed. The lands on which the Pottawattamie tribe of Indians settled, on the Kansas River, had been ceded to the United States by the Kansas tribe of Indians on the 14th day of January, 1846. (Treaty of June 5th and 17th, 1846, with the Pottawattamie Indians, Art 4. Revision of Indian Treaties, p. 182; *id.*, p. 415.) The Sixteenth Section of the Act of June 30, 1834, has no application outside of the "Indian country." And any part of the Territory of the United States ceases to be "Indian country" as soon as the "original" Indian title is extinguished. The Indian title to these lands was extinguished by the purchase made by the United States from the Kansas tribe of Indians. Moreover these Pottawattamie Indians purchased their lands in Kansas from the United States after the "original" Indian title had been extinguished (Art. 3, Treaty of 1846, Revision of Indian Treaties, p. 181). These were lands, therefore, in which all title had vested in the United States—lands taken out of the "Indian country" by the purchase of the "original" Indian title—and it would be absurd to argue that these lands, thus taken out of the "Indian country," were again placed within its boundaries because it had been purchased by Indians. The logical sequence of that argument would be to make all lands occupied by Indians "Indian country." That can not be true. Fur Co. vs. the United

States (2 Pet., 358); Bates *vs.* Clark (95 U. S., 204); *ex parte* Crow Dog (109 U. S., 556).

We, therefore, respectfully submit that the judgment of the Court of Claims is correct, and ask this Court to affirm the same.

J. H. McGOWAN,
Attorney for Appellees.

JOHN WHARTON CLARK,
Of Counsel.

UNITED STATES *v.* NAVARRE.

APPEAL FROM THE COURT OF CLAIMS.

No. 393. Submitted January 9, 1899.— Decided February 20, 1899.

Claims for depredations on the Pottawatomie Indians committed by Indians were properly allowed by the Secretary of the Interior under the treaty of August 7, 1868, and are valid claims.

THE case is stated in the opinion.

Mr. Charles C. Binney and *Mr. Assistant Attorney General Pradt* for the United States.

Mr. J. H. McGowan and *Mr. John Wharton Clark* for Navarre.

MR. JUSTICE MCKENNA delivered the opinion of the court.

Claims for depredations committed on members of the Pottawatomie tribe of Indians were referred to the Court of Claims for adjudication by the acts of Congress hereafter quoted.

The appellees in pursuance of said acts of Congress filed a petition setting forth claims for depredations committed on them by white men, and prayed judgment therefor.

The proof showed depredations committed by Indians as well as by white men, and the Court of Claims gave judgment accordingly, and the United States appealed.

Only the claims allowed for property taken by Indians are contested. They amount to the sum of $5890.

The right to recover was based on the tenth article of the treaty with the Pottawatomie Indians, proclaimed August 7, 1868. 15 Stat. 531, 533. It provided as follows: "It is further agreed that upon the presentation to the Department of the Interior of the claims of said tribe for depredations committed by others upon their stock, timber or other property, accompanied by evidence thereof, examination and report shall be made to Congress of the amount found to be equitably due, in order that such action may be taken as shall be just in the premises."

The court below found that "under said treaty these claims were by the Secretary of the Interior transmitted, with the evidence in support thereof, to Congress for its action thereon; and by Congress, under the acts of March 3, 1885, c. 341, and March 3, 1891, c. 543, said claims, with all evidence, documents, reports and other papers pertaining to same, were referred to this court to be adjudicated and determined." 23 Stat. 362, 372; 26 Stat. 989, 1011.

Nothing was done under the act of March 3, 1885. It seems to be conceded that the reason was because the act required strictly legal evidence of the claims.

The act of March 3, 1891, is as follows:

"That the claims of certain individual members of the Pottawatomie Nation of Indians, their heirs or legal representatives, for the depredations committed by others upon their stock, timber or other property, reported to Congress under the tenth article of the treaty of August 7, 1868, be, and the same are hereby, referred to the Court of Claims for adjudication. And said court shall, in determining said cause, ascertain the amounts due and to whom due by reason of actual damage sustained.

"And all papers, reports, evidence, records and proceedings relating in any way to said claims now on file or of record in the Department of the Interior or any other Department, or on file or of record in the office of the secretary of the Senate or the office of the clerk of the House of Representatives, shall be delivered to said court, and in considering the merits of the claims presented to the court all testimony and reports

of special agents or other officers and other papers now on file or of record in the departments of Congress shall be considered by the court, and such value awarded thereto as in its judgment is right and proper."

The contention of the United States depends on the meaning of the words in the act, "for the depredations committed by others." Exactly the same words are used in article 10 of the treaty, and the Secretary of the Interior, exercising his duty, reported claims for depredations, by both Indians and white men, to Congress for its action. They were, therefore, claims for depredations "reported to Congress under the tenth article of the treaty of August 7, 1868." But it is argued, and ably so, that claims for depredations by other Indians were improperly reported.

We do not think it necessary to review the argument in detail. It is sufficient to say that Congress had before it when it legislated all the claims, and did not discriminate between them. If the meaning of the treaty was doubtful, it was competent for Congress to resolve the doubt and accept responsibility for all claims. It was natural enough for it to adopt the interpretation of the Interior Department. At any rate, it did not distinguish between the claims. Its language covers those which came from the acts of Indians as well as those which came from the acts of white men.

Judgment affirmed.